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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: May 14, 1996 at 9:00 am
May 21, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

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FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Docket No. R–0902]

Transactions With Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a definition of capital stock and surplus for purposes of section 23A of the Federal Reserve Act that conforms to the definition of unimpaired capital and unimpaired surplus used by the Board in calculating the limits in Regulation O for insider lending and by the Office of the Comptroller of the Currency (OCC) in calculating the limit on loans by a national bank to a single borrower. The final rule will reduce the burden for member banks and other insured depository institutions monitoring lending to their affiliates.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Attorney (202/452–3289) Legal Division, or Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For users of the Telecommunications Device for the Deaf (TDD) *only,* please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, regulates lending and asset purchase transactions between insured depository institutions and their affiliates. In general, section 23A prohibits an insured depository institution from engaging in covered transactions (which include extensions of credit and purchases of assets) with any single affiliate in excess of 10 percent of the institution's capital stock and surplus. A 20 percent aggregate limit is imposed on the total amount of covered transactions by a bank with all affiliates. Under section 23A, all extensions of credit between an insured depository institution and its affiliate must meet certain collateral requirements. Section 23A also prohibits an insured depository institution from purchasing any low-quality assets from an affiliate and requires that all transactions with an affiliate must be conducted on terms that are consistent with safe and sound banking practices. Although section 23A, by its terms, applies only to member banks, the Federal Deposit Insurance Act applies section 23A to all nonmember insured banks (12 U.S.C. 1828 (j)), and the Home Owners' Loan Act applies section 23A to savings associations (12 U.S.C. 1468).

Section 23A does not include an explicit definition of ''capital stock and surplus.'' A 1964 Board interpretation refers to the definition of capital as ''the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired'' but explicitly excludes debt-like instruments from the definition of capital and surplus. 12 CFR 250.161. In the interpretation, the Board recognized that certain notes and debentures could be considered as capital or capital stock for purposes of membership in the Federal Reserve System, but concluded that for purposes of certain Federal Reserve Act limitations and requirements, such instruments could not be regarded as part of either capital or capital stock. A subsequent Board interpretation issued in 1971 states that capital stock and surplus, as used in provisions of the Federal Reserve Act, includes undivided profits, which are defined to include reserves for loan losses and valuation reserves for securities. 12 CFR 250.162. As a practical matter, this definition of capital and surplus has been implemented as total equity capital and the allowance for loan and lease losses (ALLL) as set forth in the bank's Report of Condition and Income (Call Report).

Revisions to the Definition of Capital Stock and Surplus

In February 1995, the OCC amended its regulation governing the amount a national bank may lend to a single counterparty, and revised the definition of unimpaired capital and unimpaired surplus upon which this lending limit was based. 60 FR 8526 (February 15, 1995) (to be codified at 12 CFR 32.2(b)). In June 1995, the Board amended its Regulation O, 60 FR 31053 (June 13, 1995) (to be codified at 12 CFR 215.2), to revise the definition of capital used to limit loans to insiders, to a definition that is consistent with that used for purposes of the OCC's single borrower lending limits. The Board took this action to eliminate discrepancies in the definitions of capital used for different lending limit purposes and to reduce regulatory burden for banks monitoring lending to their insiders. Under the revised OCC regulation, unimpaired capital and unimpaired surplus is defined as Tier 1 and Tier 2 capital, as calculated under the risk-based capital guidelines, plus the balance of the allowance for loan and lease losses (ALLL) excluded from Tier 2 capital.[1]

On December 4, 1995, the Board proposed adopting a definition of ''capital stock and surplus'' for purposes of section 23A that is the same as the capital definitions used for Regulation O and the national bank lending limits. (60 FR 62050 (1995)). Unlike the current capital definition for section 23A, the revised definition will permit banks to include in capital the bank's subordinated debt that qualifies for inclusion in Tier 2 capital. On the other hand, unlike equity capital, Tier 1 capital does not include securities revaluation reserves, in particular, gains and losses on available-for-sale securities, which under Statement of Financial Accounting Standards Number 115 (FAS 115) are considered a component of equity capital. Tier 1 capital also excludes certain intangible assets, most notably goodwill. Based on June 1995 Call Report data, the revised definition will decrease the limits for transactions with affiliates for a majority of banks. Overall, it is estimated that the revised definition of capital and surplus will result in a change for most banks of 5 percent or less from their current limit, although a few community and

[1] Under the banking agencies' risk-based capital guidelines, Tier 1 capital includes common equity, some noncumulative perpetual preferred stock and related surplus, and minority interest in equity accounts of consolidated subsidiaries. Tier 2 capital includes the ALLL up to 1.25 percent of the bank's weighted risk assets, perpetual preferred stock and related surplus, hybrid capital instruments, and certain types of subordinated debt.

mid-sized banks may experience substantial changes principally due to large gains or losses on available-for-sale securities.

Notwithstanding the decrease for many banks in the amount of capital that will be used to calculate their section 23A limit under the revised definition, the Board believes that, over all, revising the definition will be beneficial for all insured depository institutions for two reasons. First, the revised definition will provide consistency in the capital definition used for section 23A, Regulation O, and the national bank lending limits. Second, the revised definition will result in a more stable limit over time than the current definition because the revised definition excludes revaluation gains and losses on available-for-sale securities, a component of equity capital that tends to be volatile.

Public Comment

The Board received seventeen comments regarding its proposed definition of capital stock and surplus. The Board received eight comments from Reserve Banks, six comments from commercial banking organizations and three comments from trade associations. All the commenters supported the Board's efforts to reduce regulatory burden and provide greater uniformity in defining capital for regulatory purposes. Seven commenters also noted that the proposed definition will provide greater stability over time because the proposed definition excludes the gains and losses on available-for-sale securities.

Several commenters questioned whether an institution will be in violation of section 23A if, as a result of the change in the definition of capital stock and surplus, the institution's amount of outstanding covered transactions exceeded the quantitative limits of section 23A. In general, the Board believes that a change in circumstances, such as a change in the capital definition, should not adversely affect existing transactions that were entered into in good faith by an insured depository institution and its affiliate. In the past, when an institution exceeded its quantitative limit because of a change in circumstances, the Board has allowed the insured depository institution to retain the nonconforming transaction, but has not allowed the institution to engage in additional covered transactions until the institution was in compliance with section 23A. Accordingly, based on this precedent, the Board has determined that any institution whose outstanding covered transactions with its affiliates exceed its quantitative limits as a result of this rule will be allowed to retain those transactions. However, these institutions are not allowed to engage in any additional covered transactions with any affiliate, including any renewal transactions, until the institution's outstanding amount of covered transactions is in compliance with the institution's new quantitative limit.

The Board also amends 12 CFR 250.161 and 12 CFR 250.162 to delete the reference to section 23A to reflect the change.

Determination of Effective Date

Because the final rule adjusts a requirement on insured depository institutions, the final rule will become effective July 1, 1996, the first day of the calendar quarter after the date of the final rule's publication. *See* 12 U.S.C. 4802(b).

Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (the ''Act'') requires an agency to publish a final regulatory flexibility analysis with any final rulemaking. The Act requires that the regulatory flexibility analysis of a final rule provide a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the rule and a summary of the issues raised by the public comments received, the agency assessment thereof, and any change made in response thereto. This information is contained in the supplementary information above. No significant alternatives to the final rule were considered by the agency.

Another requirement for the regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply. The final rule will apply to all insured depository institutions, regardless of size. The Board has determined that its final rule will impose no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. In addition, the final rule is not expected to have a significant economic impact on small institutions. Instead, the final rule is expected to relieve the regulatory burden on the majority of insured depository institutions.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.;* 5 CFR 1320 Appendix A.1.), the Board reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 250

Credit, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 250 as set forth below:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 will continue to read as follows:

Authority: 12 U.S.C. 248(i) and 371c(e).

§ 250.161 [Amended]

2. In § 250.161 paragraph (d) is amended by removing the words ''loans to affiliates (12 U.S.C. 371c),'' in the first sentence.

§ 250.162 [Amended]

3. In § 250.162, paragraph (a) is amended by removing the words ''Loans to affiliates (12 U.S.C. 371c), purchases'' in the first sentence and adding ''Purchases'' in their place.

4. A new § 250.242 is added to read as follows:

§ 250.242 Section 23A of the Federal Reserve Act—definition of capital stock and surplus.

(a) An insured depository institution's capital stock and surplus for purposes of section 23A of the Federal Reserve Act (12 U.S.C. 371c) is:

(1) Tier 1 and Tier 2 capital included in an institution's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the institution's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of an institution's allowance for loan and lease losses not included in its Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the institution's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(b) For purposes of this section, the terms *appropriate Federal banking agency* and *insured depository institution* are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

By order of the Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10891 Filed 5–2–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–47–AD; Amendment 39–9578; AD 96–09–04]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 90–12–08, which currently requires the following on de Havilland Model DHC–3 airplanes: repetitively inspecting (using dye penetrant methods) the tailplane main rib forward flanges and the main rib forward lower flanges at the tailplane front attachment fitting for cracks and repairing any cracked flange. This AD action will retain the repetitive inspections currently required by AD 90–12–08, and will allow a certain modification as terminating action for these repetitive inspections. This action is prompted by the Federal Aviation Administration's determination that installing new angles and plates on the tailplane root ribs on de Havilland Model DHC–3 airplanes provides an equivalent level of safety to the repetitive inspections required by AD 90–12–08. The actions specified by this AD are intended to prevent failure of the tailplane structure caused by cracked tailplane main rib forward flanges or main rib forward lower flanges at the tailplane front attachment fitting, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective May 17, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Bombardier Inc., (the parent company of de Havilland) Bombardier Regional Aircraft Division, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone (416) 633–7310. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–47–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Casale, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 5th St., 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7521; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to de Havilland Model DHC–3 airplanes was published in the Federal Register on November 14, 1995 (60 FR 57201). This action would retain the repetitive inspections currently required by AD 90–12–08, and would allow incorporating a certain modification as terminating action for these repetitive inspections. Accomplishment of this action will be in accordance with de Havilland Service Bulletin (SB) No. 3/46, Revision B, dated December 1, 1989 and de Havilland SB No. 3/50, Revision A, dated February 17, 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 49 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 35 workhours per airplane to accomplish the inspection and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $102,900 or $2,100 per airplane. This figure represents the cost of the initial inspection, and does not reflect the costs for repetitive inspections or possible repairs. The FAA has no way of determining how many tailplane main rib forward or main rib forward lower flanges may need to be repaired or how many repetitive inspections each owner/operator of the affected airplanes would incur over the life of the airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90–12–08, Amendment 39–6622, and by adding a new airworthiness directive (AD) to read as follows:

96–09–04 De Havilland: Amendment 39–9578. Docket No. 95–CE–47–AD; Supersedes AD 90–12–08, Amendment 39–6622.

Applicability: Model DHC–3 airplanes (all serial numbers), certificated in any category, that do not have Modification 3/935 incorporated in accordance with de Havilland Service Bulletin (SB) number (No.) 3/50, Revision A, dated February 17, 1995.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within the next 3 calendar months after the effective date of this AD, unless already accomplished (compliance with AD 90–12–08), and thereafter at intervals not to exceed 24 calendar months.

To prevent failure of the tailplane structure caused by cracked tailplane main rib forward flanges or main rib forward lower flanges at the tailplane front attachment fitting, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect, using dye penetrant methods, the tailplane main rib forward flanges and the main rib forward lower flanges at the tailplane front attachment fitting in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 3/46, Revision B, dated December 1, 1989.

Note 2: Pay particular attention to the front attachment fitting area.

(b) Prior to further flight, repair any tailplane main rib forward flange or main rib forward lower flange found cracked during any inspection required by this AD. Accomplish this repair in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 3/46, Revision B, dated December 1, 1989.

(c) Installing tailplane root rib angles and plates of improved design (Modification 3/935) in accordance with de Havilland SB 3/50, Revision A, dated February 17, 1995, terminates the repetitive inspection requirement of this AD. Modification 3/935 may be incorporated at any time provided that any tailplane main rib forward flange or main rib forward lower flange found cracked during any inspection required by this AD is repaired.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 10 5th St., 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(f) Alternative methods of compliance approved in accordance with AD 90–12–08 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(g) The inspections, repairs, and replacements required by this AD shall be done in accordance with de Havilland Service Bulletin No. 3/46, Revision B, dated December 1, 1989, and de Havilland Service Bulletin No. 3/50, Revision A, dated February 17, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier Inc. (the parent company of de Havilland), Bombardier Regional Aircraft Division, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone (416) 633–7310. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(h) This amendment supersedes AD 90–12–08, Amendment 39–6622.

(i) This amendment (39–9578) becomes effective on May 17, 1996.

Issued in Kansas City, Missouri, on April 18, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10076 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–50–AD; Amendment 39–9585; AD 96–09–09]

RIN 2120–AA64

Airworthiness Directives; I.A.M. Rinaldo Piaggio S.p.A. Model P 180 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to I.A.M. Rinaldo Piaggio S.p.A. Model P 180 series airplanes. This action requires installing a shield on the front section of the engine cradle. A report of power control jamming as a result of freezing conditions during a high altitude flight prompted this AD action. The actions specified by this AD are intended to prevent loss of engine power or the propeller controls from jamming as a result of freezing rain entering the engine nacelle, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective June 7, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154, Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–50–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513–3830, ext. 2716; facsimile (322) 230–6899; or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to I.A.M. Rinaldo Piaggio S.p.A. Model P 180 series was published in the Federal Register on October 4, 1995 (60 FR 51944). The action proposed to require installing a shield on the front section of the engine cradle. Accomplishment of this action would be in accordance with Piaggio Service Bulletin (SB) 80–0066; Original Issue December 12, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2

workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts will be furnished by the manufacturer at no cost to the owner/operators. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $600. This figure is based on the assumption that none of the affected airplanes have shields installed and that none of the affected owners/operators have modified the airplanes.

The compliance time of this AD is presented in both hours time-in-service (TIS) and calendar time. The FAA has determined that including calendar time compliance is also necessary because the unsafe condition is the result of adverse weather conditions which can affect the nacelle and power controls while not in use as well as in flight. Therefore, to ensure that the above-described condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon both TIS and calendar time is required.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–09–09 I.A.M. Rinaldo Piaggio S.P.A.: Amendment 39–9585; Docket No. 95–CE–50–AD.

Applicability: Model P 180 Series Airplanes (serial numbers 1001, 1002, 1004, and 1006 through 1033), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 100 hours time-in service (TIS), or within the next 3 calendar months, whichever occurs later, after the effective date of this AD, unless already accomplished.

Note 2: The compliance time in this AD takes precedence over the compliance time reflected in Piaggio Service Bulletin 80–0066, Original Issue, December 12, 1994.

To prevent loss of engine power or the propeller controls from jamming, as a result of freezing rain entering the engine nacelle, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Modify the nacelle by installing a shield on the front section of the engine cradle, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Piaggio Service Bulletin (SB) No. 80–0066; Original Issue: December 12, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(d) The modifications required by this AD shall be done in accordance with Piaggio Service Bulletin No. 80–0066; Original Issue: December 12, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154, Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9585) becomes effective on June 7, 1996.

Issued in Kansas City, Missouri, on April 23, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10581 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–SW–23–AD; Amendment 39–9605; AD 96–09–29]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters, that requires replacement of the upper V-belt sheave (sheave). This amendment is prompted by three reports of cracks in the flange of the sheave. The actions specified by this AD are intended to prevent failure of the sheave, which could result in damage to other drive system components, and subsequent loss of control of the helicopter.

DATES: Effective June 7, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 1996.

ADDRESSES: The service information referenced in this AD may be obtained

from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5265, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Robinson Model R22 helicopters was published in the Federal Register on November 28, 1995 (60 FR 58579). That action proposed to require, within the next 100 hours time-in-service (TIS) or 60 calendar days, whichever comes first, replacement of the upper sheave, part number (P/N) A170–1I or J or P/N A170–2J, with a sheave having a dimension equal to or less than 0.30 inch measured from the edge of the forward retainer plate to the flange of the sheave.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 650 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,216 per helicopter for the sheave, part number (P/N) A170–1, and $2,298 per helicopter for the sheave, P/N A170–2. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,298,050, assuming replacement of the sheave in all 650 helicopters, and assuming that one-half of the helicopters have the sheave, P/N A170–1, installed, and one-half of the helicopters have the sheave, P/N A170–2, installed.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 96–09–29 Robinson Helicopter Company: Amendment 39–9605. Docket No. 95–SW–23–AD.

Applicability: Model R22 helicopters with upper V-belt sheave (sheave) part number (P/N) A170–1I or J, or P/N A170–2J, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Note 2: Determination of whether the affected sheave has been installed can be accomplished by measuring the depth from the edge of the forward retainer plate to the flange of the sheave in an area located between the webs as shown in Figure 2 of Robinson Helicopter Company R22 Service Bulletin SB–77, dated April 25, 1995. If the depth is greater than 0.30 inch, then either sheave, P/N A170–1I or J, or sheave, P/N A170–2J, is installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the sheave, which could result in damage to other drive system components, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) or 60 calendar days, whichever occurs first after the effective date of this AD, replace the sheave, P/N A170–1I or J, or P/N A170–2J, with an airworthy sheave, P/N A170–1, or P/N A170–2, having a dimension equal to or less than 0.30 inch measured from the edge of the forward retainer plate to the flange of the sheave in an area located between the webs, in accordance with paragraphs 2 through 15 of the Compliance Procedures of Robinson Helicopter Company R22 Service Bulletin SB–77, dated April 25, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) Replacement of the sheave shall be done in accordance with paragraphs 2 through 15 of the Compliance Procedures of Robinson Helicopter Company R22 Service Bulletin SB–77, dated April 25, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 7, 1996.

Issued in Fort Worth, Texas, on April 24, 1996.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–10870 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–27–AD; Amendment 39–9443; AD 95–24–13]

RIN 2120–AA64

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplane; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 95–24–13 concerning Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, which published in the Federal Register on December 22, 1995 (60 FR 246). That publication incorrectly references the number of aileron mounting spigot nut assemblies to be replaced on the wings of the airplanes. The AD currently requires ''replacing the securing nut assemblies and split pins with new special nut assemblies (Part No. SL5022 (Qty. 2))''. The intent of the AD is to require replacement of 2 special nut assemblies on each wing, for a total of 4 nut assemblies. The Final Rule AD did not specify ''each wing'', and stated that only 2 nut assemblies rather than 4 nut assemblies are required. This action corrects the AD to reflect this change.

EFFECTIVE DATE: January 17, 1996.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 17, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile (322) 230.6899; or Mr. Jeffrey Morfitt, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On November 17, 1995, the Federal Aviation Administration (FAA) issued AD 95–24–13, Amendment 39–9443 (60 FR 246, December 22, 1995), which applies to JAL HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This AD requires inspecting (one-time) the threaded portion of the aileron mounting spigots for cracks, replacing any cracked spigots, and replacing the securing nut assemblies with newly designed special nut assemblies and new split pins.

Need for the Correction

The AD incorrectly references the quantity of special nut assemblies, inferring that a quantity of 2 assemblies be replaced without indicating that the 2 assemblies on each wing (left wing and right wing) should be replaced.

Correction of Publication

Accordingly, the publication of December 22, 1995 (60 FR 246) of Amendment 39–9443; AD 95–24–13, which was the subject of FR Doc. 95–66485, is corrected as follows:

§ 39.13 [Corrected]

On page 66486, in the third column, section 39.13, paragraph (a), line 1 through line 4, replace ''Inspect the mounting spigots for cracks using both visual and fluorescent dye penetrant methods in accordance with the ACCOMPLISHMENT INSTRUCTIONS * * *'' with ''Inspect the left and right wing mounting spigots for cracks using both visual and fluorescent dye penetrant methods in accordance with the ACCOMPLISHMENT INSTRUCTIONS * * *''.

On page 66486, in the third column, section 39.13, paragraph (a)(2), line 1 through line 5, replace ''Prior to further flight, replace the securing nut assemblies and split pins with new special nut assemblies (Part No. SL45022 (Qty. 2)), * * *'' with ''Prior to further flight, replace the securing nut assemblies and split pins on both wings with new special nut assemblies (Part No. SL45022 (Qty. of 2 on each wing, total Qty. of 4 nut assemblies needed)), * * *''.

Action is taken herein to clarify this requirement of AD 95–24–13 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date remains January 17, 1996.

Issued in Kansas City, Missouri on April 17, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11031 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–CE–37–AD; Amendment 39–9608; AD 96–10–03]

[RIN 2120–AA64]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA28, PA32, PA34, and PA44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) PA28, PA32, PA34, and PA44 series airplanes. This action will require inspecting and modifying the flap lever assembly. Reports of worn flap handle attach bolts and elongated holes in the flap lever to cable mounting attach point prompted this AD action. The actions specified by this AD are intended to prevent failure of the flap handle attach bolt and sudden retraction of the flaps, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective June 14, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2629 Piper Dr., Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to The New Piper Aircraft, Inc. (Piper) PA28, PA32, PA34, and PA44 series airplanes was published in the Federal Register on October 13, 1995 (60 FR 53314). The action proposed to require inspecting

and modifying the flap lever assembly. Accomplishment of the proposed action would be in accordance with Piper Service Bulletin (SB) No. 965, dated September 1, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to each comment received from two commenters.

The first commenter recommends that the compliance time be changed to apply to aircraft with greater than 2,000 hours time-in-service (TIS) and require these aircraft to accomplish the modification within the next 500 hours TIS or 12 calendar months, whichever occurs first. The commenter acknowledges that the wear problem in the flap handle attach area is a widespread problem and has been dealt with by the industry for years. Industry's experience with the problem is that it progresses gradually over time; therefore, the immediacy of the 100 hour TIS compliance time does not seem warranted. The commenter recommends the compliance time be changed to 500 hours TIS to coincide with commercial operators' inspection cycles and 12 calendar months to coincide with an individual owner/operator's annual inspection.

The FAA recognizes the commenter's proposal, but the service difficulty reports reflect 73 reports from January 1990 to March 1995 and from these 73 reports, 50 reports were submitted from the same commercial operator. The operator submitted a TIS range of 1200 to 2400 hours TIS for the 50 occurrences in their fleet. The remaining 23 reports contain TIS values ranging from 1884 to 5063. With this information, FAA could not determine the statistical distribution or fleet average. Subsequently, the FAA made a determination that a compliance time with a 2,000 hour TIS threshold or within the next 100 hours TIS for those airplanes with greater than 2,000 hours TIS was reasonable and will not impose an undue burden on the affected owners/operators. The compliance time remains unchanged as a result of the comment.

The second commenter recommended that the standard part designation corresponding to the manufacturer's part number be included in the AD. The standard part designation is typically listed in the manufacturer's service publications and manuals.

The commenter also states that the AD as proposed requires the installation of the Piper part numbers to comply with the AD. The Piper part numbers (P/N) are equivalent to the standard parts and therefore, the standard parts designation should also be listed as acceptable compliance to this AD action.

The FAA concurs that the standard parts are equivalent to the Piper parts designated in this AD, with the exception of the bushing, Piper P/N 63900–174. The standard parts designation will be listed as equivalent parts in the Final Rule to permit AD compliance (with the exception of the bushing, Piper P/N 63900–174).

The commenter also states that P/N 407 564 was listed incorrectly in the NPRM as P/N 407 584. The FAA concurs and the part number is corrected in the Final Rule.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 30,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $16 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,080,000. This figure is based on the assumption that all of the affected airplanes have worn bolts and elongated holes and that none of the owners/operators of the affected airplanes have replaced the worn parts.

Piper has informed the FAA that parts have been distributed to equip approximately 8,000 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of the proposed AD will be reduced by $1,088,000 from $4,080,000 to $2,992,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–10–03 The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment No. 39–9608; Docket No. 95–CE–37–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial numbers
PA28–140	28–20000 through 28–26946 and 28–7125001 through 28–7725290.
PA28–150, PA28–160, and PA28–180	28–1 through 28–5859, 28–7105001 through 28–7505259, 28–E13, and 28–03.
PA28–151	28–7415001 through 28–7715314.
PA28–161	28–7716001 through 28–8616057, 2816001 through 2816102, and 2841001 through 2841346.
PA28–181	28–7690001 through 28–8690062 and 2890001 through 2890169.

Models	Serial numbers
PA28–235	28–10001 through 28–11378, 28–7110001 through 28–7710089, and 28–E11.
PA28–236	28–7911001 through 28–8611008 and 2811001 through 2811034.
PA28–201T	28–7921001 through 28–7921095.
PA28R–180	28R–30001 through 28R–31270 and 28R–7130001 through 28R–7130013.
PA28R–200	28R–35001 through 28R–35820 and 28R–7135001 through 28R–7635462.
PA28R–201	28R–7737001 through 28R–7837319 and 2837001 through 2837059.
PA28R–201T	28R–7703001 through 28R–7803374 and 2803001 through 2803012.
PA28RT–201	28R–7918001 through 28R–8218026.
PA28RT–201T	28R–7931001 through 28R–8631005 and 2831001 through 2831038.
PA32–260	32–1 through 32–1297 and 32–7100001 through 32–7800008.
PA32–300	32–40000 through 32–40974 and 32–7140001 through 32–7940290.
PA32–301	32–8006001 through 32–8406020.
PA32–301T	32–8024001 through 32–8424002.
PA32R–300	32R–7680001 through 32R–7880068.
PA32RT–300	32R–7885001 through 32R–7985105.
PA32RT–300T	32R–7887001 through 32R–7987126.
PA32R–301	32R–8013001 through 32R–8413024.
PA32R–301T	32R–8029001 through 32R–8429028.
PA34–200	34–7250001 through 34–7450220.
PA34–200T	34–7570001 through 34–8170092.
PA34–220T	34–8133001 through 34–8233088.
PA44–180	44–7995001 through 44–8195026 and 4495001 through 4495013.
PA44–180T	44–8107001 through 44–8107066.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required upon the accumulation of 2,000 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

Note 2: The compliance time specified in this AD takes precedence over the compliance time specified in the The New Piper Aircraft Inc. (Piper) Service Bulletin (SB) 965, dated September 1, 1993.

Note 3: The instructions in this AD do not mirror the Piper service bulletin and instructions in this AD take precedence over the service bulletin instructions. This AD will require installing the clevis bolt, regardless of the condition of the current part.

To prevent failure of the flap handle attach bolt and sudden retraction of the flaps, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Measure the cable mounting attach hole diameter and enlarge the hole to .316 of an inch diameter. If the diameter of the cable mount attach hole is larger than .316 of an inch, prior to further flight, replace the flap lever handle (refer to the applicable illustrated parts catalog for part number), in accordance with the *INSTRUCTIONS* section of Piper SB No. 965, dated September 1, 1993.

(b) Install a new bushing (using only Piper Part Number (P/N) 63900–174) into the cable mounting attach hole, in accordance with the *INSTRUCTIONS* section of Piper SB No. 965, dated September 1, 1993.

(c) Replace the flap lever handle attach bolt with a new clevis bolt (Piper P/N 400 673 or standard P/N AN23–11) in accordance with the *INSTRUCTIONS* section of Piper SB No. 965, dated September 1, 1993.

(d) Inspect the washer, nut, and cotter pin, and if damaged, prior to further flight, replace washer (Piper P/N 407–564 or standard P/N AN960–10), nut (Piper P/N 404–392 or standard P/N AN320–3), and cotter pin (Piper P/N 424–051 or standard P/N MS24665–132) as applicable in accordance with the *INSTRUCTIONS* section of Piper SB No. 965, dated September 1, 1993.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) The inspections and replacements required by this AD shall be done in accordance with The New Piper Aircraft Inc. Piper Service Bulletin No. 965, dated September 1, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2629 Piper Dr., Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9608) becomes effective on June 14, 1996.

Issued in Kansas City, Missouri, on April 26, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10911 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–CE–51–AD; Amendment 39–9606; AD 96–10–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 airplanes. This action requires a

complete landing light support replacement. This AD action is prompted by reports of two accidents and two incidents resulting from the landing light retainer support seal breaking apart and entering the carburetor. The actions specified by this AD are intended to prevent the landing light retainer support seal from being ingested by the updraft carburetor, which, if not detected and corrected, could result in rough engine operation or possible engine failure and loss of control of the airplane.

DATES: Effective June 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Juanita Craft-Lloyd, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7373; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 airplanes was published in the Federal Register on October 5, 1995 (60 FR 52131). The action proposed replacing the landing light support and seal assembly. Accomplishment of this action will be in accordance with Piper Service Bulletin (SB) No. 975, dated November 2, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 16,440 airplanes in the U.S. registry will be affected by this AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $140 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,274,400. This figure is based on the assumption that all of the affected airplanes have old landing light support and seal assemblies and that none of the owners/operators of the affected airplanes have replaced the landing light support and seal assemblies with parts of improved design.

Piper has informed the FAA that parts have been distributed to equip approximately 850 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of this AD will be reduced by $221,000 from $4,274,400 to $4,053,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. § 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–10–01. The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment No. 39–9606; Docket No. 95–CE–51–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial Numbers
PA–28–140	28–20000 through 28–7725290.
PA–28–150, PA–28–160, and PA–28–180	28–1 through 28–7505259, and 28–E13.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, or upon replacement of the landing light, whichever occurs first, unless already accomplished.

Note 2: Early compliance is encouraged.

To prevent the landing light seal from lodging in the carburetor, which, if not

detected and corrected, could result in rough engine operation or possible engine failure and possible loss of control of the airplane, accomplish the following:

(a) Replace landing light support and seal assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Piper Service Bulletin No. 975, dated November 2, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with The New Piper Aircraft Inc. Piper Service Bulletin No. 975, dated November 2, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-9606) becomes effective on June 10, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10913 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–CE–30–AD; Amendment 39–9607; AD 96–10–02]

RIN 2120–AA64

Airworthiness Directives; HB Flugtechnik GmbH Model HB–23/2400 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain HB Flugtechnik GmbH (Flugtechnik) Model HB–23/2400 sailplanes. This action requires inspecting (one time) the elevator control push rod tube for dents or bending and replacing the push rod tube, if damaged, inspecting the elevator control system for incorrect rigging, and repetitively inspecting the threaded adjustable extension joints in the push rod to control lever connection for cracks. If cracks are found, replacing the threaded adjustable joints at both ends of the push rod. Cracking of the threaded adjustable extension joints and incorrect rigging of the elevator control system prompted this AD action. The actions specified by this AD are intended to prevent failure of the elevator control system, which, if not detected and corrected, could result in possible loss of elevator control and loss of the sailplane.

DATES: Effective June 12, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 12, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from HB Flugtechnik GmbH, Dr. Adolf Scharfstr, 42, PF 74, A–4053 Haid, Austria, telephone 43.7229.80904. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Sailplane Program Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to HB Flugtechnik GmbH (Flugtechnik) Model HB–23/2400 sailplanes was published in the Federal Register on October 13, 1995 (60 FR 53310). This action proposed to require:

—Inspecting (one time) for bending and dents on the elevator control push rod tube, and replacing the elevator control push rod tube, if damaged,

—Inspecting the clearance between the elevator control lever and the elevator control push rod, ensuring the clearance remains at least 3 mm,

—Inspecting the threaded portion of the adjustable push rod joints (located at each end of the push rod) for fatigue cracks and deformation, and if cracked or damaged, (based on the fatigue evaluation), replacing the joints on both ends of the push rod.

—Repetitively inspecting, at intervals not to exceed 500 hours, the threaded portion of the adjustable push rod joints for cracks or deformation, and if cracked or damaged replacing the joints as necessary.

Accomplishment of the proposed action would be in accordance with HB Flugtechnik GmbH service bulletins (SB) HB–23/17/91 and HB–23/18/91, both dated October 28, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that one sailplane in the U.S. registry will be affected by this AD, that it will take approximately 3 hours to accomplish the AD action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $70 per sailplane. Based on these figures, the total cost impact of this AD on the one U.S. operator is estimated to be $250. This figure is based on the assumption that the affected owner/operator of the affected sailplane has not incorporated the modification or accomplished the inspections. The FAA has no way of determining the number of repetitive inspections the owner/operator may incur over the life of the sailplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–10–02 HB Flugtechnik GMBH: Amendment 39–9607; Docket No. 95–CE–30–AD.

Applicability: Model HB–23/2400 sailplanes (serial numbers 23001 through 23048), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, and as indicated in the body of this AD thereafter, unless already accomplished.

To prevent failure of the elevator control system, which, if not detected and corrected, could result in possible loss of elevator control and loss of the sailplane, accomplish the following:

(a) Inspect (one time) for bending and dents on the elevator control push rod tube. If the push rod tube is damaged, prior to further flight, replace the elevator control push rod tube in accordance with HB Flugtechnik GmbH (Flugtechnik) service bulletin (SB) HB–23/18/91, dated October 28, 1991.

(b) Inspect the clearance between the elevator control lever and the elevator control push rod, ensuring the clearance remains at least 3 mm. If clearance is not 3 mm, prior to further flight, adjust in accordance with the maintenance manual.

(c) Inspect the threaded portion of the adjustable push rod joints (located at each end of the push rod) for fatigue cracks and deformation, and if cracked or damaged, (based on the fatigue evaluation), prior to further flight, replace the joints on both ends of the push rod in accordance with Flugtechnik SB HB–23/17/91, dated October 28, 1991.

(d) Repetitively inspect the threaded portion of the adjustable push rod joints, at intervals not to exceed 500 hours time-in-service (TIS) thereafter for cracks or deformation, and if cracked or damaged, prior to further flight, replace the joints as necessary, in accordance with Flugtechnik SB HB–23/17/91, dated October 28, 1991.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) The inspections and modifications required by this AD shall be done in accordance with ING Heino Broitschka Flugtechnik Ges.m.b.H Service Bulletin HB–23/17/91, dated October 28, 1991, and ING Heino Broitschka Flugtechnik Ges.m.b.H Service Bulletin HB–23/18/91, dated October 28, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from HB Flugtechnik GmbH, Dr. Adolf Scharfstr, 42, PF 74, A–4053 Haid, Austria. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9607) becomes effective on June 12, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10914 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 95–AGL–15]

Modification of Class E Airspace; Alliance, OH, Salem, OH, and Youngstown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E5 airspace at Youngstown-Warren Regional Airport, Youngstown, OH and revises the exclusionary language in the Class E5 airspace designations for Alliance, OH and Salem, OH, due to the closing of the Youngstown Executive Airport, Youngstown, OH, on August 15, 1995. The intent of this action is to provide adequate controlled airspace for the existing procedures at Youngstown, OH and to modify the airspace designations at Alliance and Salem, OH, to reflect the closure of Youngstown Executive Airport.

EFFECTIVE DATE: 0901 UTC, June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Cibic, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On February 6, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E5 airspace area at Youngstown-Warren Regional Airport, Youngstown, OH, and to modify the language for the Class E5 airspace designations for Alliance, OH and Salem, OH.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class E5 airspace at Youngstown-Warren Regional Airport, Youngstown, Ohio and revises the language for the Class E5 airspace designations for Alliance, OH and Salem, OH. The closing of the Youngstown Executive Airport, Youngstown, OH on August 15, 1995 and deletion of the airport's VOR Runway 11/29 Standard Instrument Approach Procedure (SIAP) require this modification to ensure that the procedures at Youngstown-Warren Regional Airport are contained within controlled airspace and that the Alliance and Salem, OH, Class E airspace designations are appropriately identified.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Alliance, OH [Revised]

Alliance, Miller Airport, OH
(Lat. 40°58′54″ N, long. 81°02′31″ W)
Sebring, Tri-City Airport, OH
(Lat. 40°54′21″ N, Long. 81°00′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Miller Airport and within a 6.2-mile radius of the Tri-City Airport.

* * * * *

AGL OH E5 Salem, OH [Revised]

Salem Airpark Incorporated Airport, OH
(Lat. 40°56′53″ N, long. 80°51′43″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Salem Airpark, Inc. Airport, excluding that airspace within the Alliance, OH, Youngstown Elser Metro Airport, OH, Class E Airspace areas.

* * * * *

AGL OH E5 Youngstown Warren Regional Airport, OH [Revised]

(Lat. 41°15′32″ N, long. 80°40′34″ W)
Youngstown, Landsdowne Airport, OH
(Lat. 41°07′50″ N, long. 80°37′10″ W)
Youngstown VORTAC
(Lat. 41°19′52″ N, long. 80°40′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Youngstown-Warren Regional Airport and within 3.1 miles each side of the Youngstown VORTAC 358° radial extending from the 6.9-mile radius to 10 mile north of the VORTAC, and within the 6.2-mile radius of the Landsdowne Airport.

* * * * *

Issued in Des Plaines, Illinois on April 1, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–11025 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AEA–14]

Establishment of Class E Airspace; Richlands, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Richlands, VA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 25 at Tazewell County Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tazewell County Airport.

EFFECTIVE DATE: 0901 UTC, June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan., Airspace Specialist, System Management Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 8, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Tazewell County Airport, Richlands, VA (61 FR 551). The development of a GPS SIAP at Tazewell County Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Richlands, VA. The development of a GPS SIAP at Tazewell County Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 25 SIAP at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Richlands, VA [New]

Tazewell County Airport, VA
(Lat. 37°03′49″ N, Long. 81°47′54″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Tazewell County Airport.

* * * * *

Issued in Jamaica, New York on April 10, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–11024 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Requirements for Labeling of Retail Containers of Charcoal

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Under the Federal Hazardous Substances Act, the Commission issues a rule to change the required labeling for retail containers of charcoal intended for cooking or heating. The labeling addresses the potentially lethal carbon monoxide hazard associated with burning charcoal in confined spaces. The amendments, which include a pictogram, make the label more noticeable and more easily read and understood and increase the label's ability to motivate consumers to avoid burning charcoal in homes, tents, or vehicles.

DATES: The amended rule becomes effective November 3, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Mary Toro, Division of Regulatory Management, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504–0400 ext. 1378. Copies of documents relating to this rulemaking may be obtained from the Office of the Secretary, Washington, DC 20207, telephone (301)504–0800.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutes and Regulations. Since its creation in 1973, the Consumer Product Safety Commission (''Commission'' or ''CPSC'' has administered the Federal Hazardous Substances Act (''FHSA''), 15 U.S.C. 1261–1278. Prior to that time, the FHSA was administered by the Food and Drug Administration (''FDA'').

The FHSA defines ''hazardous substance'' as including any ''substance or mixture of substances which (i) is toxic * * * if [it] may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *.'' Section 2(f)(1)(A) of the FHSA, 15 U.S.C. 1261(f)(1)(A). Hazardous substances are misbranded if they do not bear the labeling required by section 2(p)(1) of the FHSA, 15 U.S.C. 1261(p)(1).

Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue regulations establishing variations from or additions to the labeling required under section 2(p)(1) if the Commission finds that the requirements of section 2(p)(1) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance. Rulemaking under section 3(b) is conducted under the informal notice and comment procedure provided in 5 U.S.C. 553.

In addition, section 3(a) of the FHSA, 15 U.S.C. 1262(a), authorizes the Commission to issue regulations declaring products to be hazardous substances if the Commission finds they meet the definition of hazardous substance in section 2(f)(1)(A). The purpose of this authority is to avoid or resolve uncertainty as to the application of the FHSA. 15 U.S.C. 1262(a).

In 1971, the Food and Drug Administration (''FDA'') issued a rule under section 3(a) of the FHSA to declare charcoal in containers for retail sale and intended for cooking or heating to be a hazardous substance. 36 FR 14,729 (August 11, 1971); 21 CFR § 191.5. At the same time, FDA issued a rule under section 3(b) of the FHSA to require a statement on such packages of charcoal that would warn of the potentially deadly hazard of CO poisoning from charcoal when used in a confined area. *Id.* at § 191.7. These rules are currently codified at 16 CFR §§ 1500.12(a)(1) and 1500.14(b)(6), respectively. The currently required label is as follows:

BILLING CODE 6355–01–P

WARNING: Do Not Use for Indoor Heating or Cooking Unless Ventilation is Provided for Exhausting Fumes to Outside. Toxic Fumes May Accumulate and Cause Death.

[1] The Commission voted 2–1 to issue this rule. Chairman Ann Brown and Commissioner Thomas H. Moore voted in the majority. Commissioner Mary Sheila Gall voted in the minority. Each commissioner issued a separate statement concerning this vote. Copies of the statements can be obtained from the Commission's Office of the Secretary, Washington, DC 20207, telephone (301) 504–0800.

BILLING CODE 6355–01–C

The current label is required to appear on both the front and back panels of bags of charcoal, in the upper 25% of the panels, at least 2 inches below the seam, at least 1 inch above any other reading material or design element of the bag, and in specified minimum type sizes.

2. Nature of the hazard. [6, Tab B][2] CO is produced by the incomplete combustion of fuels such as charcoal. The level of CO produced from burning charcoal may accumulate to toxic levels in closed environments. CO is a colorless, odorless gas which reduces the blood's ability to carry oxygen by reacting with hemoglobin to form carboxyhemoglobin (COHb). Individuals' reactions to CO exposure vary depending on several factors, including age, health status, and smoking habits. Due to the nonspecific symptoms that can be associated with CO poisoning (e.g., fatigue, lethargy, dizziness, diarrhea, or nausea), misdiagnoses of both acute and chronic CO poisonings can be expected. Additionally, CO is odorless, which may contribute to individuals frequently being unaware of their exposure to CO. High levels of COHb in the blood can cause death.

3. Petition from Barbara Mauk. On October 12, 1990, CPSC received a letter from Barbara Mauk petitioning the Commission to amend the current label on bags of charcoal. [1] In this letter, the petitioner described an incident that occurred when she and her son were camping 1 year previously. Her son died from CO poisoning, and she was hospitalized and treated for CO poisoning, after she brought a still-warm charcoal grill inside her camper. The petition (No. HP 91–1) requested that the current label on bags of charcoal be revised to state that: (1) charcoal produces CO (and, if applicable, other lethal or toxic fumes), (2) charcoal produces fumes until the charcoal is completely extinguished, and (3) CO has no odor.

On December 22, 1992, the Commission voted to grant the petition as to the statements that charcoal produces CO and that CO has no odor, and to deny the petition as to adding statements that charcoal produces these fumes until the charcoal is completely extinguished. [2] The Commission also voted to improve the label's precautionary language, specifically with reference to ventilation. In this regard, it was thought that the current label's statement that charcoal should not be used for indoor cooking or heating unless ventilation is provided is dangerously misleading. Consumers may assume erroneously that measures such as opening a door or cracking a window would provide adequate ventilation. Further, consumers are unlikely to be able to supply the exhaust hoods, ducting, and powerful positive exhaust fans that are needed to provide adequate ventilation.

4. Subsequent actions by the Commission. In 1993, the Commission's staff became aware of data that indicated that a pictogram is needed to communicate the safety message to those who do not read English. [6, Tab E(1)] Further, an article, discussed below in section B of this notice, reported that 73% of the victims in one area over an 11-year period were members of ethnic minorities, many of whom were Hispanic or Asian immigrants who could not speak English. [3]

On April 22, 1994, the staff met with members of the charcoal industry to present the staff's recommendations for revising the warning label. Industry members indicated a willingness to revise the warning label, but raised a number of concerns. [6, Tab F] These concerns were considered in further developing the label.

On June 1, 1994, the Commission directed the staff to prepare, for the Commission's consideration, a draft notice of proposed rulemaking (''NPR'') to amend the labeling currently required for packages of charcoal to warn of the dangers of burning charcoal indoors. The label to be developed by the staff would: (1) clarify the dangers of burning charcoal indoors; (2) remove the possibly misleading statement that implies that charcoal can be safely burned indoors with ''ventilation;'' (3) add color to the signal word panel; (4) include a pictogram, if feasible; (5) include a Spanish safety message if a pictogram is not feasible; and (6) include additional features recommended by the staff to make the safety messages more conspicuous and understandable.

On April 13, 1995, staff met with industry members again to present the results of pictogram tests and staff's recommendations for revising the warning label on packages of charcoal. [6, Tab F] The changes to the recommended warning label reflected, for the most part, concerns industry representatives raised at the April 1994 meeting. After considering the comments made at the April 1995 meeting, the staff recommended a revised label to the Commission. The staff also described possible variations of that label for the Commission's consideration. The proposed label, and the main reasons that various features of the label were chosen, are described in section D of this notice. The proposed rule was published in the Federal Register on August 10, 1995, with a request for public comments, to be submitted no later than October 24, 1995. 60 FR 40785. The comments received on the proposal, and the Commission's responses to the comments, are described below in Section E of this notice.

B. CO Poisoning Incidents

The Commission's Division of Hazard Analysis examined available data concerning CO poisoning incidents. That Division estimates that there was an average of about 28 non-fire CO-related deaths per year associated with charcoal grills and hibachis from 1986 to 1992.[3] (The annual estimate of non-fire CO deaths fluctuates, with no discernible pattern. The estimates ranged from 20 in 1987 and 1990 to 38 in 1992.)

Data from the CPSC's National Electronic Injury Surveillance System (''NEISS'') indicate that there was an average of about 300 emergency-room-treated injuries involving charcoal grills and hibachis annually from 1991 to 1994. [6, Tab C] After the Commission considered the proposed rule, the Commission's Hazard Analysis staff reviewed eight additional incident reports involving CO deaths and injuries associated with the indoor use of charcoal. These incidents were for the years 1994 to the present. [15] The factors identified in these recent incidents were very similar to those previously reported.

There were 14 victims reported in the additional incidents: 9 died and 5 recovered. Where a victim's membership in an ethnic minority was reported, Hispanics continued to be the group reported most often. The data indicated that the Hispanic victims either spoke little or no English. The circumstances indicated that the victims were unaware of the potential lethal effects of burning charcoal indoors.

Most of the incidents involved a charcoal grill. Information on the safety labeling on packages of charcoal was not available. However, the Commission's Office of Compliance has no record of opening a case based on a violation of the charcoal special labeling

[2] Numbers in brackets indicate the number of a document as listed in the List of Relevant Documents in Appendix 1 to this notice.

[3] As noted above, CO is produced as a product of incomplete combustion. The term ''non-fire'' means that the CO was not produced by a conflagration or other unintended combustion.

requirement, and there is no reason to believe that the packages of charcoal involved in these incidents did not bear labels warning of the CO hazard.

Many of the incidents occurred when victims burned charcoal in their homes or in vehicles. Most of the incidents occurred when victims used charcoal to keep warm. Most of the incidents occurred during the fall and winter.

An article by Hampson, N.B. et al. (1994), reports that 79 victims were treated for CO poisoning resulting from burning charcoal indoors in the Seattle, Washington, area between October 1982 and October 1993. [3] Fifty-eight (73%) of the victims were members of ethnic minorities, many of whom were Hispanic or Asian immigrants who could not speak English. [3] There was no information available, however, documenting whether they could read English.

C. The Pictogram

The CPSC staff, a charcoal manufacturer, and Dr. Neil B. Hampson of Washington State each developed a pictogram. [6, Tab E(2)] Each pictogram was tested according to ANSI Z535.3, American National Standard for Criteria for Safety Symbols. The pictogram developed by CPSC staff obtained the highest percentage of correct responses in the first round of testing. This pictogram achieved 56% correct responses, with 4% critical confusion. (Critical confusion is where the message conveyed is the opposite of the intended message.) Based on findings from the test results, the three pictograms were revised and presented for a second round of testing. The revised pictogram developed by a charcoal manufacturer obtained the highest percentage of correct responses in this round of testing (74% correct responses, with no critical confusion).

The ANSI Z535.3 test method recommends that, to be selected, a pictogram should either obtain 85% correct responses with no more than 5% critical confusion or be paired with other features, such as a verbal message. [10] For the reasons discussed below in responding to comments on the proposal, the Commission concludes that it is appropriate to use the pictogram that scored highest in the tests described above.

D. The Proposed Label

The Commission's Human Factors staff concluded that, as a matter of optimum label design, it would be desirable for the label to be consistent with the ANSI Z535.4, American National Standard for Product Safety Signs and Labels. [6, Tab E(1)] In meetings before the Commission considered the proposal, however, the industry pointed out that this optimum label would require the bag to have a minimum of four colors: red, orange, black, and white. The industry stated that many of the printing presses for charcoal bags have the capability of printing only six colors, and that presses capable of printing more than six colors are very expensive. Generally, most bags already have at least six colors, and the presently-used colors often do not include one or more of the colors that would be required by the ''optimum'' label described above. Industry members stated that customers may consider the color scheme of a product to be part of its brand identification.

For the reasons given by the industry, the Commission proposed a label that did not use the colors specified by ANSI, but will still be conspicuous. [13] Thus, the revised label will not change the present requirement that the label shall be in a ''color sharply contrasting with the background'' and that the borderline shall be ''heavy.'' Examples of color combinations that the Commission's staff considers to be sharply contrasting, in order of expected visual efficiency, are: black on white; black on yellow; white on black; dark blue on white; white on dark red, green, or brown; black on orange; dark green and red on white; white on dark gray; and black on light gray. [9] Examples of colors that may not be considered sharply contrasting are: black on dark blue or dark green, dark red on light red, light red on reflective silver, and white on light gray or tan. See 16 CFR 1500.121(d).

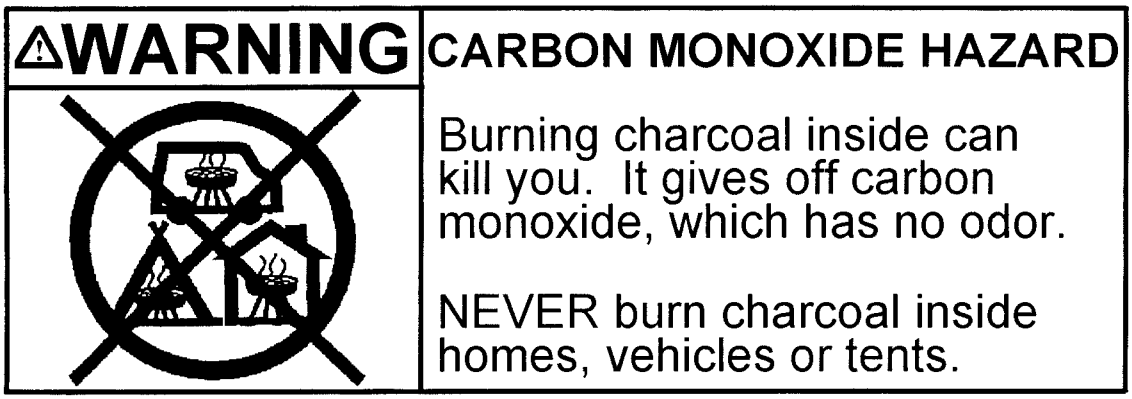
To make the label easier to read and understand, the Commission proposed that the messages be presented concisely and in an outline form, be presented in a horizontal format, be left-justified with a ragged right margin, be in upper and lower case lettering, be in the appropriate point-type, have an acceptable strokewidth-to-height ratio, and have sufficient space between lines of text. [6, Tab E(1)]

When the minimum specified type sizes are laid out in the configuration specified in the revised label, the label is 2 inches high. The revised label is taller than the currently required label. The current label also is required to be at least 2 inches from the top seam. If this required distance were to remain the same, the bottom edge of the taller revised label would have to be lower on the bag. This could interfere with existing graphics, which would then have to be redesigned. This could require additional modifications to printing plates and increase the cost of the label revision, without providing any identifiable safety benefit. Therefore, the Commission proposed to change the minimum allowable distance from the top seam to the label from 2 inches to 1 inch. This would allow the taller label to be printed without affecting other printing lower on the bag.

The Commission proposed to retain the current requirements that the label must be on both the front and back panels of the bag and in the upper quarter of the panels.

For the reasons stated above and elsewhere in this notice, the Commission is revising the label required on packages of charcoal to appear and read as follows:

BILLING CODE 6355–01–P



BILLING CODE 6355–01–C

E. Comments on the Proposal

The Commission received seven comments in response to the notice of proposed rulemaking. The issues raised by the comments are summarized below, along with the Commission's responses.

Issue: Pictogram

Comment: Slash vs. ''X.'' Several commenters addressed the use in the proposed revised label of an ''X'' overlaying the pictogram to indicate that the actions depicted in the pictogram are prohibited. A commenter argued that this aspect of the pictogram is not consistent with any international standard or to ANSI Z535.3 ''Criteria for Safety Symbols,'' in which prohibited actions are characterized by a single slash in a circle. Another commenter stated that a single slash ending at the edges of the circle across three separate pictograms for each at risk location may be more universally recognized and effective than an X. The commenter believed this would be more in line with global marketing standards. This commenter noted that the pictogram was tested using a population largely made up of Hispanics, and questions whether the same results would have been obtained with other ethnic groups.

Response: The Commission's Human Factors staff conducted a two-phase study to determine which pictogram most clearly conveyed the safety message to the at-risk population. Three pictograms were tested in the first phase, all of which incorporated a circle with the ANSI-recommended diagonal slash through the image. The most effective pictogram was understood by only 56% of the subjects, with 4% critical confusion. (Critical confusion means that the subjects' response was the opposite of the correct response.)

The test subjects' responses during the test sessions and debriefing revealed that some of the subjects thought that the slash applied to only those items in the circle that actually intersected with the slash. Other subjects did not understand that the slash was a prohibition symbol. Subjects recommended the use of an ''X'' to better communicate the prohibition message. Although the slash is commonly used to communicate the message of ''no'' or ''don't,'' it was clearly not effective with some Latin American subjects.

Consistent with ANSI Z535.3, the second round of testing incorporated design lessons drawn from the results of the first round of testing. The slash was replaced by an ''X,'' and several minor design changes were made to the pictograms. The measured comprehension improved significantly.

Based on the data, Human Factors concluded that using the ''X'' in place of the slash is fully justified because:

1. The highest comprehension score using a slash was 56% with 4% critical confusion. All three pictograms tested in the second round using the ''X'' scored significantly better than the best slash pictogram tested in the first round. The pictogram ultimately selected was identified correctly by 74% of the test subjects, with 0% critical confusion.

2. The primary objective for developing and selecting the pictogram design was to maximize the effectiveness of the prohibition message, to never burn charcoal inside a house, tent, or vehicle. Effectiveness was defined and empirically measured by assessing the explicit understandability of the pictogram by a sample of at-risk charcoal users. This is precisely the primary criterion described in ANSI Z535.3–1991. Section A.1 of ANSI Z535.3–1991 states, ''In the following procedure, the primary criterion for determining symbol effectiveness is that of understandability; in other words, that the symbol clearly conveys the intended message to the appropriate test group.'' Based on the Commission's primary objective, to maximize effectiveness, and ANSI's endorsement of that goal, the use of the ''X'' is justified.

3. Although ANSI clearly defines the slash as the preferred design to designate prohibition, Section 7.4 of ANSI Z535.3–1991 supports the search for new and more effective designs. Section 7.4 endorses this rationale of flexibility and continuous refinement by stating ''If a new symbol has been tested and found to be acceptable, it and the results of the testing procedure may be forwarded to the ANSI Z535 Committee for consideration for inclusion in a revision of the present standard.'' The Commission intends to submit the results of this work to ANSI so that they may consider the merits of supporting alternate symbol designs for ethnic or other special populations.

The empirically validated pictogram that was ultimately selected for the new labeling requirement meets the original CPSC objective of maximizing effectiveness and is consistent with the principles for designing labels specified in ANSI Z535.3. Regarding the comment that the label should be universal and not ethnically sensitive, the label is designed to be effective for all charcoal users.

Therefore, the Commission concludes that the X symbol is a more effective communicator of the behavior to be prohibited than is the slash. Accordingly, no change in the proposed revised label is warranted in this regard.

Comment: Effectiveness of the pictogram. Commenters contended that the pictogram fails to satisfy recognized standards of effectiveness. The commenters state that the ANSI standard requires 85% correct responses with a maximum of 5% critical confusion, while the CPSC-proposed pictogram received 74% correct responses with no critical confusion. One company believes that 74% is significantly different from 85% and expressed serious concern about a pictogram which failed recognized

standards of effectiveness not by 1 or 2%, but by 11%. The fact that the proposed pictogram had no critical confusion, whereas ANSI allows up to 5%, is irrelevant to this commenter.

Response: These commenters are incorrect in stating that the CPSC-tested pictogram does not meet the effectiveness criteria of ANSI.

The particular number of correct responses obtained in the test of a label depends on the particular test methodology used. Therefore, there is no precise way to define acceptable and unacceptable scores. ANSI Z535.3, section A.2.7, states ''A criterion of 85% correct responses with a maximum of 5% critical confusion is suggested for acceptance of a given symbol.'' Section A.2.7 of ANSI Z535.3, however, states that symbols which fail to meet the 85% level should be used with a supplementary word message, or be supplemented by specialized training. Thus, ANSI Z535.3 clearly recognizes that scores less than 85% may still be used in certain circumstances.

CPSC's label incorporates the features that ANSI recommends for labels scoring less than 85% correct responses. Although the pictogram was tested alone, the recommended label contains both the pictogram and a written message. Additionally, the CPSC's staff met with the charcoal industry regarding an information and education campaign to warn consumers about the dangers of burning charcoal indoors.

The Human Factors staff chose to use an experimental methodology that was extremely rigorous and that therefore may have biased the measured comprehension scores downward. This was done to maximize confidence in the measured scores, and to minimize possible criticism about inflating the scores through using a less stringent method. The following factors may tend to lower the percentage of correct responses in CPSC's tests compared to that which might be obtained using other test methodologies that would also be acceptable under ANSI Z535.3:

1. ANSI Z535.3 endorses both open-ended testing and multiple-choice testing. The Human Factors staff chose to use open-ended testing as it is the most demanding assessment process to measure comprehension. Both ANSI and the Commission recognize that this rigorous methodology may negatively influence scores. ANSI Z535.3, Section A.2.6, states ''It should be stressed that different techniques may not give comparable results.''

2. The criteria used to select subjects were strongly biased toward selecting an at-risk sample. Fifty percent of the subjects were Hispanics who did not read English and were at or below the government standard for poverty. The remaining half were of no specified ethnicity who did read English and were below the median income. No middle or upper income people were included in the test. The Human Factors staff chose to pursue this methodology in order to assess the pictogram in the worst-case situation. The objective was to ensure that the selected pictogram communicates the hazard to the populations that are at greatest risk. More correct responses might have been obtained if the sample tested had represented the general population.

3. In order to reduce the possible learning effect associated with viewing the pictograms in succession, the pictograms were presented out of context, that is, on a white sheet of paper. They were separated from each other by pictograms associated with other hazards. Had the pictograms been tested in context, on bags of charcoal, it is likely that higher comprehension scores would have been obtained. [15, Tab D(1), Cahill, 1975]

Furthermore, the International Organization for Standardization (''ISO''), issued an international standard, ISO 9186, *Procedures for the Development and Testing of Public Information Symbols,* that recommends testing methodologies to evaluate symbols intended to be used internationally. These methodologies are intended to test the common effectiveness of symbols for populations of different countries; the tests were not developed to evaluate labeling in the U.S. Section 5.5.7 of ISO 9186 states, ''If the comprehension score * * * exceeds 66%, then this variant may be used to define the standard image content.'' Later in the same section, ''For critical referents (e.g. safety symbols), the 66% criterion should be rigorously adhered to.'' Although ISO 9186 was not designed specifically to test a label such as the one at issue here, it does show that an acceptance criterion for understandability of less than 74% has been adopted by a well-known standards organization.

As noted above, a commenter states that an effectiveness score of 74% is significantly different from the 85% threshold described in the ANSI standard. The commenter is correct if he is referring to ''significantly different'' in a technical statistical sense; the difference between 74% and 85% in this test is statistically significant at the commonly used 95% confidence level. However, the difference is not significantly statistically different at a 96% confidence level. [16] More importantly, for the reasons explained above, this issue is not central to whether the CPSC test scores are adequate.

The commenter also states that critical confusion is irrelevant. The Commission disagrees with this conclusion. An individual who is critically confused, and thus believes that the pictogram means that it is appropriate to burn charcoal indoors, may be more likely to create the risk of carbon monoxide poisoning than someone who merely does not know what the pictogram means. This principle is reflected in the ANSI standard, which states, at Section A.2.7, ''Where several symbols are evaluated for a given referent, the symbol that both meets the above criteria, and performs best in terms of highest percentage of correct answers and lowest percentage of critical confusion should be selected.''

Comment: Size of the test group. A commenter contended that the 50-member test group was too small for this type of testing. According to the commenter, a minimum of 100–150 subjects should be used.

Response: The number of test subjects used by the Commission is consistent with ANSI Z535.3, which suggests a minimum of 50 subjects as the ''best balance between statistical reliability and ease of testing.'' [10] Thus, in the absence of any specific reason why the information obtained by using 50 subjects is unreliable, the Commission concludes that an adequate number of persons were tested.

Comment: Label ''clutter.'' A commenter contended that the pictogram is small and cluttered compared to the size of the label and does not conform to an ANSI standard pictogram format, which depicts one message icon per enclosed symbol.

Response: The selected pictogram conforms to the general principles described in ANSI Z535.3. A pictogram with only one icon, a house, was tested in the first round. A number of subjects did not generalize that pictogram to include vehicles and tents, which are extremely dangerous places to use charcoal improperly. Subjects suggested including a vehicle and tent to communicate the message ''Never burn charcoal inside homes, vehicles, or tents.'' The proposed pictogram includes all three elements. According to ANSI Z535.3, the intent of the testing procedure is ''to choose a symbol which best conveys the message.'' Thus, the pictogram selected conforms to the ANSI testing procedure.

Any perception of ''clutter'' could be reduced by making the pictogram larger. However, this would increase the

minimum height of the label. The Commission believes the minimum allowable label height will effectively communicate the desired messages. The Commission is not requiring a larger label for the reasons propounded by the industry and discussed below.

For the reasons discussed above, the Commission concludes that the label will be sufficiently effective.

Comment: Lack of pictogram specificity may discourage charcoal use. A commenter contends that the pictogram does not identify the danger associated with charcoal misuse and does not convey what CO is. The commenter fears that rather than simply warning users about the danger of using charcoal in confined areas, the pictogram may discourage charcoal grilling. The commenter also asked what message was received by the 26% who did not respond correctly.

Response: Admittedly, a pictogram may not be a feasible way to explicitly communicate the invisible hazard of CO. However, most people will get the intended concept that they should not burn charcoal inside homes, vehicles, or tents, even if they will not learn from the pictogram alone that the hazard is CO. This is shown by the 74% rate of correct responses for the selected pictogram. Additionally, the pictogram and the words together convey the complete message.

The remaining 26% of the subjects, who did not give correct responses, either omitted part of the intended message or completely missed the concept. However, none of these subjects were left with the impression that they should not use charcoal or not use it for grilling. Thus, there is no reason to conclude that the pictogram will cause any reduction in charcoal sales. The issue of whether the entire label will cause any reduction in sales is discussed later in this section.

Issue: Label Proportional to Package

Comment: Keep specified label size as a minimum only. In the proposal, the Commission specified a minimum required size for the label and solicited comment on whether to require that bags that are larger than the smallest bags on the market bear labels that are larger than the minimum. Two manufacturers commented that if larger warning labels are required on larger bags, artwork lower on the bags may have to be changed. Therefore, the commenters recommended that the size be specified as a minimum, as proposed.

Response: The Commission agrees that requiring larger labels on larger bags is likely to increase the cost of the rule in some cases by requiring additional changes to the graphics on the bags. Further, the Commission lacks data from which to conclude that any benefits of larger labels on large bags would justify these increased costs. Accordingly, the Commission is not requiring that the size of the required labeling increase in proportion to the size of the bag.

Issue: Layout of Label

Comment: Label format. A commenter stated that CPSC's proposed label arrangement does not conform exactly to ANSI Z535.4 ''Product Safety Signs and Labels'' guidelines. The commenter mentioned that the label should be divided into two halves, one half being the pictogram/graphic panel and the other half being the signal word and word message panel. Alternatively, the signal word could be centered above the pictogram and word message panels.

Response: While ANSI Z535.4 provides an example of a label configuration as described by the commenter, ANSI maintains that ''actual * * * layout * * * may vary depending on application requirements.'' [10] The differences between the label finally adopted and ANSI's example were necessary to accomplish the goals of: making the type size of the safety messages consistent, to the extent feasible, with that currently specified in § 1500.14(b)(6); incorporating a legible pictogram; and not unduly increasing the height of the label. Accordingly, this comment provides no basis for changing or rejecting the revised label.

Issue: Responsibility of Users

Comment: Fault of users. A commenter asked how many people involved in the CO events had even ''bothered'' to read the existing warning label. The commenter also asked how many were under the influence of alcohol or drugs and would not have seen or paid any attention to a warning label of any kind.

Response: Information on whether the victims had actually read the label was not available. Some victims attempted to supply ventilation, however. In most of the incidents, drug or alcohol use was not reported.

Issue: Label Language

Comment: Specificity of warning. A commenter stated that the sentence ''NEVER burn charcoal inside homes, vehicles or tents'' is too specific. The commenter suggests that the addition of the words ''such as'' would prevent the public from concluding that it would be safe to burn charcoal in a confined space other than a home, vehicle, or tent.

Response: The CPSC incident data show that people primarily use charcoal as a heat source inside homes and, secondarily, in vehicles and tents. Thus, the label is intended to address use in those areas. The commenter provides no data showing that other locations are likely to be involved in this type of incident. Adding words that cannot be shown to be beneficial is undesirable, since people are more likely to read a label message if it is short and concise. Additional wording also could have possible adverse effects on the label's height or lettering size. Accordingly, the Commission declines to adopt the suggestion.

Comment: Understanding the term ''carbon monoxide.'' A comment stated that the label statement that charcoal ''gives off carbon monoxide'' may be ambiguous to those with minimal education or limited knowledge of English. For example, the commenter suggested that such users might think that CO was associated with charcoal ashes. The commenter suggests that the term ''gas'' be used to link the statement to the warning hazard.

Response: The Commission has no reason to believe that persons with a limited command of English would interpret that ashes, or anything other than a gas or fumes, would be ''given off'' by charcoal. The charcoal does not ''give off'' ash, but rather becomes ash. In addition, some consumers are aware that CO is deadly and would therefore be motivated to comply with the label for that additional reason. The addition of the word ''gas'' is not likely to be of further benefit. Thus, no change in the label language in this regard is needed.

Comment: Spanish and/or English. A commenter notes that the summary data indicate that Hispanics are at higher risk than the general population. The commenter states that this problem could be better addressed if the label's text were in both English and Spanish.

Response: The Commission's staff previously recommended that if the pictograms tested did not adequately communicate the safety message, then the message should be presented in both English and Spanish. As noted above, however, the Commission concludes that the pictogram does adequately convey the message. Furthermore, according to the clinical psychologist who administered the test—who regularly works with low-income Hispanics—many in the target population are unable to read either English or Spanish. [6, Tab E(2)] Therefore, a safety message in Spanish instead of a pictogram would not reach

those Hispanics who do not read Spanish. Additionally, while the largest single group of minority victims identified in the CPSC data is Hispanic, others—most notably Asian immigrants who do not read English or Spanish—would not be informed by a label in either language.

Accordingly, a pictogram appears to be the most effective measure to address those who do not read English. The Commission does not believe that a label that combines both English and Spanish warning statements with a pictogram is warranted. For the reasons discussed above, the Commission cannot conclude in this case that such a label would be significantly more effective than one combining a pictogram and a warning statement in English. Furthermore, including both languages and a pictogram on the label would increase the size of the label, with potential additional costs to the industry.

Comment: Children of illiterate immigrants. A commenter suggested that the Commission overlooked the fact that children of persons illiterate in English play an important role in the family because the children can read English and often act as the family's interpreters. Accordingly, the commenter concluded that the label should consist of a pictogram and an English language warning that could be understood by the 12 through 18 year old children of illiterate immigrants. The commenter suggested an expanded version of the Commission's proposed label. The commenter suggests the label should be ''comprehensible by a child with a reading level corresponding to approximately the sixth grade.''

Response: The Commission is not aware of any data showing that the children of illiterate immigrants act as interpreters of the warning label on packages of charcoal. Nevertheless, the revised label for packages of charcoal, issued below, is written at the seventh grade level, as is the commenter's suggested label. Thus, most if not all of the teenagers referred to by the commenter would be able to read the revised label.

The additional wording suggested by the commenter would not necessarily increase safe behavior compared to the revised label. Further, the additional wording could decrease the likelihood that the label would be read by the user. Accordingly, the Commission is not adopting this commenter's suggested wording change.

Comment: Other toxic products. A commenter believes that the current labeling language is very clear; that labeling refers to ''toxic fumes.'' The commenter argues that because toxic fumes other than carbon monoxide may be emitted from burning charcoal, the current labeling should not be revised.

Response: Although charcoal produces combustion by-products other than CO, CO production is the most significant hazard. A specific reference to CO will better communicate the nature of that hazard, since many people already are familiar with the lethal potential of CO. Further, the safety message conveyed by the label addressing the CO hazard may address the hazard of any other toxic fumes produced by charcoal. Thus, the current labeling language is being revised to address only the CO hazard.

Comment: ''Burning'' charcoal. A commenter suggests that the term ''burning charcoal'' implies that a flame must be present in order to present the hazard. However, smoldering coals are equally dangerous. The commenter suggests referring to ''lit or partially lit,'' instead of ''burning,'' charcoal.

Response: Charcoal is a familiar product. Most people know that, when charcoal is lit, flames are produced initially and that the flames eventually subside, resulting in glowing charcoal. It is unlikely that consumers would think that the phrase ''burning charcoal'' suggests that charcoal is not burning unless it produces a flame. Accordingly, replacing the word ''burning'' with the longer phrase ''lit or partially lit'' is not warranted.

Comment: Burn time. A commenter stated that, although the proposed warning is much more explicit than the previous warning, it still gives no real indication about how long charcoal ''burns'' and gives off CO after it no longer seems to be burning. Even with the proposed warning, some people may still bring CO releasing charcoal into an enclosed area thinking that it is no longer dangerous.

Response: Information available to the Commission indicates that most users who are killed or injured by this CO hazard are intentionally using charcoal indoors as a heat source and are unaware of the danger. Thus, the revised warning label is intended to address this primary scenario.

Further, it would be difficult to tell consumers how to determine when the charcoal is completely extinguished. In addition, it is likely that adding the sort of information suggested by this commenter would dilute the label's ability to communicate the primary hazard. Accordingly, the Commission is not adopting this suggestion.

Comment: First-aid instruction on label. A commenter suggested that, as with other potentially fatal products, it would help save lives if the warning label also described what to do in the case of CO poisoning.

Response: The labeling requirements for charcoal under 16 CFR 1500.14(b)(6) specifically state that they supplement the labeling required for hazardous household substances by section 2(p)(1) of the FHSA. Section 2(p)(1) requires that the label bear an instruction for first-aid treatment when ''necessary or appropriate.''

First-aid instructions in labels for packages of charcoal would be useful only after the users have disregarded or failed to read the label's warning to not burn charcoal inside. Before a label's first-aid instruction would be useful under these circumstances, a person would have to suspect that the symptoms being experienced or observed are caused by fumes given off by the burning charcoal. The incident data available to the Commission do not show that consumers realize the cause of the symptoms being experienced. Thus, the Commission lacks data at this time from which to conclude that it is necessary or appropriate to require first-aid instructions for CO poisoning on packages of charcoal.

Issue: Conspicuousness of Label

Comment: Contrasting colors. A commenter urges the CPSC to set more concrete requirements for the conspicuousness and legibility of the warning label. The commenter suggests dark lettering on a white background with the word ''WARNING'' and the pictogram ''X'' in red.

Response: The Commission agrees that it is important that the revised label be conspicuous and legible. Accordingly, the Commission has adopted a number of requirements to achieve these goals. More than two colors are not necessary to achieve conspicuousness. To enhance the conspicuousness of the label, the revised label contains: contrasting colors as specified in 16 CFR 1500.121(d)(1), a pictogram, and an easily read type size. Other enhancements, including a concise safety message, make the safety messages easily understood.

Requiring the use of red, white, and a dark color in the label would, in some cases, require either the redesign of the bag's graphics or machinery that can print a higher number of colors. As discussed below in Section G of this notice, the purchase of such additional equipment could increase the initial, one-time expenses of the rule by more than 5 times. It also could introduce ongoing expenses that will not be caused by the rule as adopted. The

Commission cannot conclude that any increase in effectiveness that might occur as the result of using these additional colors would warrant the substantial additional cost of such a rule. Accordingly, the Commission has not adopted this suggestion.

Issue: Placement of Label

Comment: Margin to seam. A commenter argued that allowing only 1 inch between the top of the warning and the seam of the bag is not enough. The commenter noted that many people open the bag by tearing under the seam. This practice could result in tearing through the warning and rendering it unreadable to the next user of the charcoal left in the bag. The commenter also stated that because people roll the top part of the bag down to keep it closed after removing some of the charcoal, a third warning should be required toward the bottom of the bag. The commenter argued that, with the present proposal, only the person who first opens a bag of charcoal has a good chance of seeing the warning.

Response: The Commission agrees that the revised label could be obliterated by ripping the bag. However, many bags are constructed so the top seam can be neatly opened. In any event, the consumer is likely to see the label before opening the bag. As to the lack of visibility due to rolling the top of the bag for storage, the label would become visible again when the bag is unrolled for use. There are no data showing that the increased costs of placing the warning labels lower on the bag, or adding another warning label, to address these concerns would be justified.

Comment: Location of label's borderline. A commenter requested clarification in the final rule that it is the label's heavy borderline that should be at least 1 inch ''below the seam and at least 1 inch above any reading material * * *.'' Otherwise, the commenter expressed the concern that the rule could be interpreted as applying the 1-inch clearances to the lettering within the borderline.

Response: The Commission concludes this comment has merit, and the final rule has been clarified in this regard.

Issue: Typography

Comment: Boldface type and capital letters. A commenter stated that if boldface type is intended for any part of the label, it should be clearly specified in the final rule. Also capital letters should be specified for the statement of hazard, if that is the intent.

Response: The Commission agrees, and this has been clearly specified in the final rule.

Issue: Effectiveness of Labeling

Comment: Effectiveness of old label. A commenter asked whether the incidents involving charcoal were occurring as a result of the existing warning on the label or in spite of the warning? If the latter is true, the commenter recommends that the Commission consider other alternatives to address these incidents.

Response: The available information is insufficient to show how the current label affects users. However, the label currently required is dangerously misleading since it may imply to the user that it is safe to burn charcoal indoors. The label needs to be modified to correct this flaw. Further, for the reasons stated above, the label should be modified to better address the hazard. Thus, in either of the situations described by the commenter, it is appropriate to revise the label.

Comment: Benefits (effectiveness) of new labels. A commenter contends that the Commission should not impose significant changes in the labeling requirements for packages of charcoal unless data exist in the record showing that persons who would burn charcoal indoors with the current label would not do so with the revised label. Another company was concerned about the most likely potential benefit to society instead of the maximum potential benefit, which was estimated at $134 million.

Response: The Commission is unable to obtain data sufficient to quantify the effectiveness of the new warning label. However, as described above, there are several problems with the current label.

The new warning label addresses the deficiencies of the current label. The revised label eliminates the potentially misleading statement that implies that consumers can safely burn charcoal indoors if ventilation is provided. In addition, the label's arrangement and wording more closely follow principles established by labeling experts that are intended to make labels more effective. Finally, the new label incorporates a pictogram, which is likely to make the label more effective for the at-risk populations that do not read English. Therefore, the revised label will inform people about the risks of burning charcoal indoors better than the present label.

The new label need not be very much more effective than the current label in order to justify its costs.[4] The estimated one-time cost to industry of revising the label is $1 million. If this is viewed as an investment that will save a life in the future, the benefits of the rule would exceed its costs if the label revisions avert only one death within 32 years of the change. (This assumes a value of $5 million for saving a statistical life and a 5% discount rate. A 10% discount rate would produce positive net benefits if the death was averted during the next 16 years.)

Making some assumptions may help to visualize the extremely low degree to which the revised label would need to be effective in preventing deaths to be cost-effective. One assumption is that the average estimated number of deaths per year for the 7-year period 1986–1992 would continue if the label is not changed. Under this assumption (and with the 5% discount rate, $5 million per life scenario described above), the label's revision would be cost-effective if it were only about 1/10 of one percent effective in reducing deaths.

Issue: Loss of Sales

Comment: Loss of sales. One commenter is more concerned about the potential for the rule to induce a loss in sales of charcoal than about any increase in printing costs. Another commenter also is concerned about a loss of sales, believing that a label change is not justified by the record.

Response: Seventy-four percent of the pictogram test subjects understood that the pictogram indicates that they should not burn charcoal in homes, tents, and vehicles. However, none of the subjects thought that the pictogram meant that charcoal should not be burned or should not be used for grilling. This indicates that there should be no measurable negative impact on sales of charcoal.

Issue: Effective Date

Comment: Length of delay. One company recommends that the effective date of the final rule be 12 to 18 months after its publication, as proposed, assuming the final rule is published in January or February of 1996. Another company requests at least a 30-month effective date because the company holds up to a 3-year supply of preprinted bags. According to this commenter, any effective date less than 30 months should apply only to bags printed, rather than filled, on or after

[4] The Commission is always interested in ensuring that the costs of its rules are reasonable in relation to their expected benefits. For the reasons given below, the Commission believes that is the case here. However, in this type of proceeding, there is no statutory requirement that costs and benefits must be determined or balanced.

the effective date. One commenter recommends that the new rule should go into effect no later than 12 months from October 1995 so that, by next winter, charcoal bags will have the new warning label.

Response: An effective date of October 1996, requested by one commenter, will not allow sufficient time to change over to the new label. On the other hand, the final rule was not published by February 1996, as assumed by the first commenter, a charcoal manufacturer. The staff contacted this commenter, who stated that an 18-month effective date would not be a problem if the rule was published by June 1996. With publication of the rule in April 1996, and an 18-month effective date, 26 months from the proposal in August 1995 will have elapsed when the rule goes into effect. By then, many firms are likely to have eliminated or substantially reduced their inventories of preprinted bags in anticipation of these new requirements. This should minimize bag inventory loss by any company, including the commenter who requested a 30-month effective date. The Commission is choosing an 18-month effective date, which will provide sufficient time to deplete most existing noncomplying inventory. This will eliminate or mitigate adverse economic consequences from inventory loss.

Issue: Size of Label for Small Packages

Comment: Smaller labels. A commenter stated that its smallest package of charcoal (2.5 lb., 6 inches wide) should be subject to different minimum label-size requirements (1½ inches high and 5½ inches wide). The commenter indicated that a label that is a minimum of 1½ inches high and 5½ inches wide is needed on this package to keep the label from running over the sides of the package and detracting from its appearance. The commenter recommended that this could be accomplished by moving the signal word panel over the message panel, and by slightly decreasing the size of the lettering, the spacing between the safety messages, and the size of the pictogram.

Response: The Commission agrees that the final rule should allow a label of the size requested on the smallest-size package of charcoal. The Commission believes this will not unduly compromise the label's conspicuousness or legibility, and will allow the consumer to see the entire label on these small bags. However, the proposed configuration of the label should be maintained by simply making the label smaller. Using labels of more than one configuration could cause confusion for consumers. Accordingly, the final rule should allow the smallest package of charcoal to have a label that is a minimum of 1½ inches high and 5½ inches wide.

Issue: Scope of the Requirement

Comment: Coverage of charcoal for restaurants and other commercial establishments. A comment suggests that packages supplied to restaurants and other commercial establishments should not be excluded from the labeling requirement. The commenter argues that this would put workers and patrons at risk.

Response: The terms of the rule itself do not limit the locations to which it will apply. The Commission intends that all packages of charcoal that are sold at retail and can be regulated under the FHSA will be subject to the revised requirements. However, the FHSA does not grant jurisdiction for the Commission to regulate products used only in commercial establishments.

Under the FHSA, the Commission can, except for toys, regulate only hazardous substances that are ''intended, or packaged in a form suitable, for use in the household.'' FHSA § 2(p), 15 U.S.C. 1261(p). Thus, the only packages of charcoal that would not be subject to the revised labeling requirement are those that are not sold at retail or are, e.g., in packages that are so large they are not intended or suitable for use in the household. If it is impractical for charcoal manufacturers to provide different packages for home and commercial use, the rule will have the effect of ensuring that packages of charcoal used in restaurants and other commercial establishments will have the revised labeling. To the extent that separate packages are produced, the Commission lacks the authority to take actions solely to protect workers in commercial establishments or to take actions to protect consumers from risks that could be adequately reduced by actions taken under the Occupational Safety and Health Act of 1970. 15 U.S.C. 2080(a). However, the Commission is not aware of any incident of CO poisoning from charcoal used in a restaurant or similar establishment.

Comment: Lump charcoal. A commenter stated that perhaps ''lump'' charcoal should not be subject to the labeling requirement. The commenter speculated that the non-charcoal ingredients in briquet-type charcoal may contribute to the hazard in the reported cases. The commenter also speculates that the victims from less developed countries may be familiar with the safe use of lump charcoal and that the incidents could be the result of the misleading current labeling regarding ventilation.

Response: Although there are some differences between lump charcoal and charcoal briquets, they both present a serious CO hazard if misused. The CPSC staff performed an experiment comparing the emissions levels of CO production from both lump and briquet charcoal. The experiment showed that similar masses of lump and briquet charcoal produced similar amounts of CO. Although lump charcoal produced about half of the amount of CO as did an equal volume of charcoal briquets, the level of CO production from lump charcoal was still well above that which could produce dangerous concentrations. Thus, there is no basis for excluding lump charcoal from the scope of the amended rule.

Comment: Other carbon-producing products. A commenter stated that the rule should apply to ''[a]ny carbon based or carbon producing product whose end use is combustion and is intended for household use * * * includ[ing] wood chips, wood chunks, wood logs, coals, products produced from biomass, etc.'' The commenter argued that these products also produce CO.

Response: The other products cited by this commenter have not been shown to be used in confined areas. Such use is needed to create the hazard addressed by the revised label. These other products produce enough smoke that it is not feasible to use them in homes, vehicles, tents, or any confined area. Thus, there is no basis for expanding the scope of the rule to include these products.

F. Effective Date

The rule applies only to filled containers of charcoal. Marketers of charcoal, however, have indicated that it is not unusual to have an inventory of printed bags that would take 1 or 2 years to use up. One commenter indicated that it has up to 3 years or more of a supply of preprinted bags in storage. These marketers would prefer that the revised requirement relate to the date the bag or other container was printed, so that all existing inventories could be used. However, it would be impractical for the Commission to determine whether a bag was printed before the effective date when the bag might not be filled for some time after that date. Accordingly, the Commission has decided that the rule will apply to all containers of subject charcoal that are filled on or after the effective date.

In order to address the marketers' concern about inventories, however, the

revised rule will not become effective until sufficient time has passed for the industry to use up most of its current inventory of printed bags. The Commission estimates that this will have occurred by 18 months after the final rule is issued, or November 3, 1997. This also will provide time to revise the plates needed to print the new label, revise any other plates that may be affected on the bag, conduct consumer acceptance tests if needed, print new bags, and incorporate the new bags into production. [15, Tab E] Of course, as the Commission stated at the time it proposed the revised label, manufacturers who order additional printing of bags between now and the effective date of the rule should limit the quantities ordered so that large numbers of bags will not remain unfilled at the effective date and have to be discarded or stickered with the new label.

Some manufacturers may wish to voluntarily use the revised label before the effective date of the final rule. For such firms, the Commission will, until further notice published in the Federal Register, consider labels complying with the final rule as complying with the current requirements of 16 CFR 1500.14(b)(6). (The Commission previously allowed use of the proposed label before the effective date. Specific authority for such use is not needed at this time, because labels that comply with the proposed rule will also comply with the final rule.)

G. Economic and Product Information [6, Tab G; 15, Tab E]

Charcoal is a solid carbon material made from wood subjected to extremely high temperature. It is available in lump, briquet, and powdered forms. To produce charcoal briquets, charcoal is ground, mixed with other ingredients, and compressed. Lump and briquet charcoal is used as a fuel in cooking and in specialized scientific, industrial, and horticultural applications. Recreational cooking consumes approximately 80–90% of charcoal production. Specialized uses account for the remainder.

It is estimated that approximately 824,000 tons of charcoal briquets were sold in 1995. Charcoal briquet sales doubled between 1967 and 1977, were relatively flat during the 1980's, and have risen since 1991. The rising popularity of gas grills may explain the flattening of sales during the 1980's. Charcoal briquet sales account for approximately 80–90% of the annual production of charcoal. Lump charcoal sales are a very small percentage (less than 4%, according to industry sources) of the annual production of charcoal. Imports comprise less than 1% of the domestic sales of charcoal.

Supermarkets and hardware, discount, drug, and garden supply stores sell charcoal to consumers in a variety of types and packages. Three major types of charcoal briquets are available. One is the standard briquet. Another is the ''instant-light'' briquet, which is impregnated with a flammable substance. The third is a ''flavor additive'' briquet which is produced with an aromatic wood such as hickory or mesquite. Standard briquets generally are sold in multi-walled (multi-layered) 5, 10, 20, and 40-pound paper bags. The instant-light briquets are available in similar 2½, 4, 5, 8, and 15-pound bags. Briquets are also available in single-use, wax impregnated, ''light-the-bag'' packages. Lump charcoal, which is pure charcoal, is marketed as a natural product and is available in packaging similar to briquets. Charcoal also may be sold in other sizes of bags or in corrugated boxes, depending upon marketing considerations. Based on an informal study of the market in and around Washington, D.C., the retail price of charcoal ranges from approximately $.25 to $.75 per pound, depending on package size, although the retail price of some specialty charcoals may be higher.

Approximately 10 companies manufacture lump and briquet charcoal in the United States. Several companies import charcoal. According to industry representatives, the top five domestic charcoal manufacturers control an estimated 90–95% of the market, with the leading company controlling approximately 50%. Manufacturers provide lump charcoal and charcoal briquets under an estimated 250 different brand names, most of which are private or ''store'' brands. Relatively few are nationally or regionally marketed brands.

According to the Barbecue Industry Association (''BIA''), 71 million households owned barbecue grills in 1993. [5] In addition, the BIA estimates that 58% of grill owners (41 million households) own a charcoal grill. The peak season for cooking on a grill is from the start of Daylight Savings Time through Labor Day. However, 52% of grills are used throughout the year. The number of ''barbecuing events'' each year (including gas and charcoal fuels) more than doubled over a 10-year period, with an estimated 2.6 billion occurrences in 1993.

According to a BIA-sponsored National Family Opinion survey conducted in the summer of 1993, gas grill owners indicated that they use their grill about twice as often as charcoal grill owners. [5] This ratio may not apply year round, since there may be a greater relative use of gas grills in the winter. If it is assumed that this 2:1 ratio applies year round, however, the number of barbecuing events attributed to charcoal is approximately 870 million in 1993. This results in an estimated exposure of 21 such events per year per household owning a charcoal grill.

It is estimated that approximately 824,000 tons of charcoal briquets were sold in the U.S. in 1995. [15, Tab E] This amounts to about 1.6 billion pounds of briquets, or 160 million bags with an average weight of 10 pounds. In 1993, there were an estimated 870 million charcoal barbecuing events. Dividing the approximately 809,000 tons of charcoal briquets sold that year by the number of events, the average amount of charcoal used was about 1.9 pounds per event. If each household that owns a charcoal grill barbecues 21 times a year, each such household uses 40 pounds of charcoal briquets per year, or the equivalent of four 10-lb bags.

As noted above, there are approximately 28 deaths and 300 CO-related emergency room-treated injuries associated with the use of charcoal each year. *Id.* Thus, there was approximately one death for every 1.5 million households owning charcoal grills (or 0.68 deaths per million such households). Also, there was one CO injury for every 136,667 households owning charcoal grills (or 7.3 injuries per million such households). Additionally, the estimated 160 million bags of charcoal briquets sold in 1995 were associated with approximately one death for every 5.7 million charcoal briquet bags (0.18 deaths per million bags). Further, there was one CO injury for about every 0.5 million bags (1.9 injuries per million bags).

The Commission estimates that changing the labeling requirements for packages of charcoal has the potential for substantial benefits to society. Based on the CPSC's injury cost model, the average annual societal cost of an injury from charcoal-related CO poisoning is approximately $10,000. The annual societal cost of these injuries is approximately $3 million, given the estimated 300 such injuries per year.

Additionally, there are an estimated 28 deaths per year from charcoal-related CO poisonings. Assuming a statistical value of life of $5 million, these injuries and deaths cost society about $143 million annually. The avoidance of these injuries and deaths represents the maximum potential benefits to society of the new labeling requirements.

If the Commission had mandated the ''optimum'' warning label described above, which includes additional color requirements, the costs to industry of changing labels would have included both one-time, start-up expenses and continuous, ongoing expenses. Start-up expenses include the cost of new printing equipment, printing plates, artwork, and negatives. Ongoing expenses would relate to any additional colors used in the warning label.

Industry representatives indicated that the aggregate start-up expenses for the ''optimum'' label could have amounted to as much as $6 million. Further, the ongoing costs for the added colors that label would have required could have been around $4 million per year.

However, the Commission eased the current requirements for the label placement on bags of charcoal, and did not mandate additional colors. This will allow continued use of current printing equipment. Therefore, the costs of the revision that is being adopted are estimated to be no more than $1 million in start-up expenses, with no ongoing expenses.

Besides the costs of making changes to charcoal bags, loss of bag stocks would be incurred if the effective date does not allow for a substantial reduction in old inventory of unfilled bags. As discussed above, the effective date of the revised labeling rule will be 18 months after publication of the final rule. This should allow almost all firms to use up existing inventories of printed bags. As the Commission stated in the proposal, ''manufacturers who order additional printing of bags between now and the effective date of the rule should limit the quantities ordered so that large numbers of bags will not have to be discarded or stickered with the new label.'' 60 FR at 40790. Packagers who followed that advice will in effect have had 26 months to deplete their inventories of preprinted bags.

Only one industry member has indicated that it has more than 2 years inventory. If any preprinted bags remain unfilled at the effective date, the costs of not using these bags and of discarding them are not expected to be significant.

No estimates are available of the effectiveness of the revised label in reducing charcoal-related CO injuries and deaths. However, if the one-time cost to industry of revising the label ($1 million) is viewed as an ''investment'' for saving a life in the future, the benefits of the rule would exceed its costs if the label revisions avert one death within 32 years of the change. (This assumes a value of $5 million for saving a statistical life and a 5% discount rate. A 10% discount rate would produce positive net benefits if the death was averted during the next 16 years.) Given the present death rate of 28 per year, it is reasonable to believe that such levels of effectiveness will be achieved.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis examined the potential effects of the revised rule on small entities. [15, Tab E] Businesses affected by label-change costs may include charcoal manufacturers (approximately 10 firms), bag suppliers, and firms that own a charcoal brand name (proprietary or private label brands). Industry representatives predict that the bulk of the costs of developing new labels will fall initially on the charcoal manufacturers. As noted above, these costs may include those associated with the development or purchase of new printing plates, artwork, and negatives.

Several private label manufacturers have indicated that they will be disproportionately affected by a label change. These firms package charcoal under a large number of brand names, which may require hundreds of plate changes. In the notice of proposed rulemaking, the Commission proposed to ease the margin requirements of the current regulation (i.e., allowing the label to be at least 1 inch, instead of at least 2 inches, below the seam of the bag) and proposed continued use of contrasting colors as opposed to use of ANSI colors, which were originally considered. Easing of the margin requirements and use of contrasting colors will substantially reduce the cost of the label change. The costs may be further mitigated if the firms are able to pass them through to their customers or if their plates are near the end of their service life. Costs for small firms are not expected to be significant, due to the relatively small number of brands handled by such firms.

The rule should not require firms to buy new printing presses. Most manufacturers will have enough time to use up existing supplies of printed bags. Bags filled with charcoal before the effective date are not subject to the revised requirements.

Accordingly, for the reasons given above, the Commission certifies that the rule will not have significant economic effects on a substantial number of small entities.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC's procedures for environmental review, the Commission has assessed the possible environmental effects associated with the rule to revise the warning labels for packages of charcoal. [15, Tab E] Analysis of the potential impact of this rule indicates that it will have no significant effects on the environment since the effective date enables almost all firms to deplete existing stocks of empty bags. (Some firms have indicated that, depending on the time of the year, they may have as much as a 2-year supply of filled and empty bags.) As previously noted, bags filled before the effective date will not be affected by the revised rule. Even if some old inventory of bags remains, as one commenter contends, the environmental consequences are expected to be insignificant.

Therefore, because the revised rule would have no significant impact on the environment, neither an environmental assessment nor an environmental impact statement is required.

J. Conclusion

For the reasons discussed above, the Commission concludes that the labeling required by section 2(p)(1) of the FHSA for packages of charcoal is not adequate for the protection of the public health and safety, in view of the special hazard of CO poisoning presented by using charcoal in a confined area. The Commission finds that the additional label requirements in the revised label issued below are necessary for the protection of the public health and safety. These requirements are issued under the authority of section 3(b) of the FHSA, 15 U.S.C. 1262(b).

Effective date: The final rule is effective November 3, 1997.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law Enforcement, Toys.

For the reasons given above, the Commission amends 16 CFR part 1500 as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.14 is amended by redesignating paragraphs (b)(6) (i) and (ii) as paragraphs (b)(6)(i) (A) and (B).

3. In § 1500.14, newly designated paragraph (b)(6)(i)(A) is amended by Nonvember 3, 1997 after ''products''.

4. Section 1500.14 is further amended in newly designated paragraph (b)(6)(i)(B), by adding ''packaged before November 3, 1997 after ''charcoal''.

5. Section 1500.14 is further amended by adding a new paragraph (b)(6)(ii) to read as follows:

§ 1500.14 Products requiring special labeling under section 3(b) of the act.

* * * * *

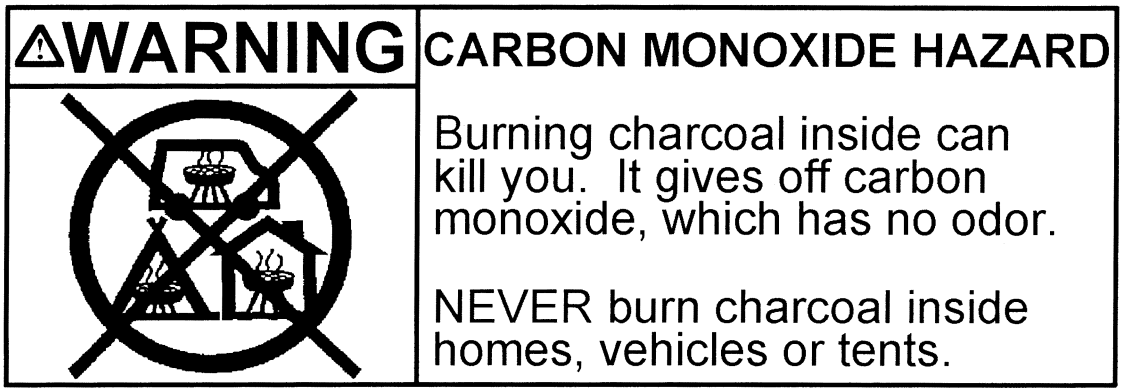
(b) * * *

(6) * * *

(i) * * *

(ii)(A) Because inhalation of the carbon monoxide produced by burning charcoal indoors or in confined areas can cause serious injury or death, containers of such products packaged on or after [insert date that is 18 months after publication] shall bear the following borderlined label.

BILLING CODE 6355–01–P



BILLING CODE 6355–01–C

(B) Except as provided in paragraph (b)(6)(ii)(C) of this section, the following requirements apply to bags of charcoal subject to paragraph (b)(6)(ii)(A) of this section. The label specified in paragraph (b)(6)(ii)(A) of this section shall appear within a heavy borderline, in a color sharply contrasting to that of the background, on both the front and back panels in the upper 25 percent of the panels of the bag, and with the outer edge of the borderline at least 2.54 cm (1 inch) below the seam and at least 2.54 cm (1 inch) above any other reading material or design elements. The signal word ''WARNING'' shall be in bold capital letters in at least 7.14 mm (9⁄32 inch) type. The remaining text of the warning statement shall be in at least 4.763 mm (3⁄16 inch) type. The phrase ''CARBON MONOXIDE HAZARD'' shall be in bold. This phrase and the word ''NEVER'' shall be in all capital letters. The lettering shall have a strokewidth-to-height ratio of 1:6 to 1:8. The label shall be at least 50.8 mm (2 inches) high and 147.5 mm (5 3⁄16 inches) wide. The label's lettering, spacing between the bottom of the letters of one line and the top of the letter of the next line, and pictogram shall have the size relation to each other and to the remainder of the label shown in paragraph (b)(6)(ii)(A) of this section.

(C) For bags of charcoal subject to paragraph (b)(6)(ii)(A) of this section that are 6 inches or less wide, the minimum label height may be reduced to 38 mm (1.5 inches) and the minimum width may be reduced to 139.7 mm (5.5 inches). The signal word ''WARNING'' shall be in capital letters in at least 6.32 mm (0.249 inch) type. The remaining text of the warning shall be in at least 4.23 mm (0.166 inch) type. All other requirements of paragraphs 6(b)(ii) (A) and (B) of this section shall apply to these bags.

Dated: April 29, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of Relevant Documents

(Note: This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Petition HP 91–1 from Barbara Mauk.

2. Letter to Barbara Mauk from Sadye E. Dunn, CPSC, January 28, 1993.

3. Hampson, N.B. et al., JAMA (January 5, 1994).

4. Cost information from industry.

a. The Clorox Company (Kingsford), P.O. Box 493, Pleasanton, CA 94566.

b. King and Spalding, representing Royal Oak Enterprises, Inc., 1730 Pennsylvania Ave. N.W., Washington, D.C. 20006.

c. Hickory Specialties, Inc., P.O. Box 1669, Brentwood, TN 37024.

5. Barbecue Industry Association survey. Barbecue Industry Association, 710 East Ogden, Suite 113, Naperville, IL 60563.

6. Briefing package dated July 6, 1995, with Tabs A–H.

TAB A—Background Information on Charcoal Labeling in Briefing Package memo dated May 18, 1994, accompanied by FDA's Notices of Proposed and Final Rulemaking dated September 2, 1970, and August 11, 1971, and Petition for Amending Labeling Requirements for Charcoal Intended for Household Use, dated October 12, 1990.

TAB B—Memorandum from Laureen E. Burton of Directorate for Health Sciences to Sharon R. White, entitled ''Carbon Monoxide Toxicity Review for the Charcoal Labeling Project,'' dated March 8, 1994.

TAB C—Memorandum from Leonard Schachter, Directorate for Epidemiology, Division of Hazard Analysis to Sharon R. White, entitled ''Charcoal Labeling Project,'' dated December 12, 1994.

TAB D—Memorandum from Charles M. Jacobson, Office of Compliance and Enforcement to Susan E. Womble, entitled ''Compliance Experience with Current FHSA Labeling Requirements for Charcoal Briquets,'' dated April 30, 1992.

TAB E—1. Memorandum from Sharon R. White of Directorate for Epidemiology,

Division of Human Factors, to The File entitled, ''Proposed Revisions to Labeling Requirements for Packages of Charcoal'' dated June 15, 1995.
2. Memorandum from George Sweet of Directorate for Epidemiology, Division of Human Factors to Sharon R. White entitled, ''Pictogram Testing for Warning Labels on Charcoal Bags,'' dated June 12, 1995.
TAB F—Logs of Industry Meetings on (1) April 22, 1994, and (2) April 13, 1995.
TAB G—Memorandum from Mary F. Donaldson of Directorate of Economic Analysis to Sharon R. White, entitled ''Economic Analysis of a Revision to Charcoal Labeling,'' dated June 22, 1995.
TAB H—Draft Federal Register Notice—Notice of Proposed Rulemaking.
7. Letter from James C. Stephen, President, Weber-Stephen Products Co., to Sharon R. White, CPSC, May 11, 1995.
8. Letter from Harleigh Ewell, CPSC, to James C. Stephen, President, Weber-Stephen Products Co., June 29, 1994.
9. Woodson, W.; Tillman, B.; and Tillman, P., 1992.
10. ANSI Z535.3–1991, American National Standard, Criteria for Safety Symbols.
11. Perry, E., and Neily, M. (1985). Burning Charcoal Briquettes in a Fireplace. U.S. Consumer Product Safety Commission, Washington, DC.
12. Letter from Leonard S. Gryn, Executive Vice President, Weber-Stephen Products Co., to Harleigh Ewell, CPSC, July 5, 1995.
13. Notice of Proposed Rulemaking, 60 FR 40785 (August 10, 1995).
14. Comments on proposed rule, Nos. CH96–1–1 through CH96–1–7.
15. Briefing package, consisting of a briefing memorandum from Sharon White, Project Manager, to the Commission, March ____, 1996, and Tabs B and D–E:
TAB B—Memorandum from Leonard Schachter, CPSC Directorate for Epidemiology and Health Sciences, to Sharon R. White, entitled ''Deaths and Injuries Associated with Charcoal,'' dated November 28, 1995.
TAB C—1. Memorandum from Sharon R. White, CPSC Directorate for Engineering Sciences, to File, entitled ''Responses to Comments on the Proposed Rule on the Labeling Requirements for Packages of Charcoal,'' dated February 28, 1996.
2. Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis, to Sharon R. White, entitled ''Response to Comments, Proposed Rule Amending Labeling on Packages of Charcoal,'' dated February 28, 1996.
3. Memorandum from Rikki Khanna, CPSC Directorate for Engineering Sciences, to Sharon R. White, entitled ''Responses to Comment on Proposed Rule for Labeling of Retail Containers of Charcoal (REF: CH96–1–3),'' dated February 9, 1996.
4. Memorandum from Mary F. Toro of the Office of Compliance, Division of Regulatory Management, entitled Charcoal Labeling Package—Comments on the NPR dated December 13, 1995.
5. Memorandum from Kimberly Long of Directorate for Epidemiology and Health Sciences to Sharon R. White, entitled ''Comments to Proposed Rule Amending Package Labeling of Charcoal, FR., Vol. 60, No. 154, August 10, 1995, pp. 40785,'' dated December 6, 1995.
TAB E—Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis, to Sharon R. White, entitled ''Economic Analysis of a Revision to Charcoal Labeling,'' dated December 8, 1995.
16. Memorandum from Mary Ann Danello, Ph.D,. Associate Executive Director for Epidemiology and Health Sciences, ''Corrected Response to Comments for Proposed Rule Amending Package Labeling of Charcoal, FR, Vol. 60, No. 154, August 10, 1995, pp. 4078ff,'' dated April 3, 1996.

[FR Doc. 96–10978 Filed 5–02–96; 8:45 am]
BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5 and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1, appendix B). The following fee schedule for fiscal 1996 reflects the actual costs to the Commission of providing those services during fiscal years 1993, 1994 and 1995. Accordingly, the Commission will change the fees as follows: Applications for contract market designation for a futures contract will be reduced from $9,600 to $8,300; contract market designation for an option contract will be increased from $1,600 to $1,800; contract markets that simultaneously submit designation applications for a futures and an option on that futures contract will be reduced from a combined fee of $10,000 for both to $9,200 for both; and leverage commodity registration will be maintained at $4,500. In addition, the Commission will publish the schedule of fees for registered futures association and exchange rule enforcement and financial reviews.

EFFECTIVE DATE: Contract Market Designation and Leverage Commodity Registration May 3, 1996. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Gerald P. Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone number 202–418–5156.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts these fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the fiscal 1996 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

Background Information

I. Computation of Fees

The Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs (direct costs), and benefits and administrative costs (overhead costs).

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structured Code (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor that is made up of two components—benefits and general and administrative costs. Benefits, which include retirement, insurance and leave, are based on a government-wide standard established by the Office of Management and Budget in Circular A–76. General and administrative costs include the

[1] See Section 237 of the Futures Trading Act of 1982 (7 U.S.C. 16a) and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

Commission's costs for space, equipment, utilities, etc. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for prior fiscal years were 93% in 1993, 95% in 1994 and 92% in 1995.

Once the total personnel costs for each fee item (contract market designation, rule enforcement review, etc.) have been determined for each year the overhead factor is applied and the costs for fiscal years 1993, 1994 and 1995 are averaged. This results in a calculation of the average annual cost over the three-year period.

II. Applications for Contract Market Designation

On August 23, 1983 the Commission established a fee for Contract Market Designation. 48 FR 38214. This fee was based upon a three-year moving average of the actual costs expended and the number of contracts reviewed during that period of time. The fee charged was reviewed again in fiscal 1985 and every year thereafter to determine the fee for the current year. In fiscal 1985 the overwhelming majority of designation applications was for futures contracts as opposed to option contracts. Therefore, the proposed fee covered both futures and option designation applications. In fiscal 1992 the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract. It also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for review of the option contract designation application was even lower than the individual cost of reviewing the futures contract plus the option contract.

The Commission staff reviewed the actual costs of processing applications for contract market designation for a futures contract for fiscal years 1993, 1994 and 1995 and found that the average cost over the three year period was $8,313. The review of actual cost of processing applications for contract market designation for an option contract for fiscal years 1993, 1994 and 1995 revealed that the average costs over the same three year period was $1,876. Accordingly, the Commission has determined that the fee for applications for contract market designation for a futures contract will be reduced to $8,300 and the fee for applications for contract market designation as an option contract will be increased to $1,800 in accordance with the Commission's regulations (17 CFR part 5, appendix B). In addition, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract will be reduced to $9,200.

III. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in fiscal years 1993, 1994 or 1995. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR part 1, appendix B), the Commission calculates the rule enforcement and financial review fees based on its actual costs, as well as actual exchange trading volume. The formula for calculating the rule enforcement and financial review fee is 0.5a + 0.5vt = current fee. In the formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across exchanges over the last three years and ''t'' equals the average annual cost for all exchanges.

To determine the fee, first the staff calculates actual costs for the last three fiscal years. The average annual costs for that time period for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY 1993–1995 average annual costs for review services
Chicago Board of Trade	$264,915.17
Chicago Mercantile Exchange	243,452.97
Coffee, Sugar and Cocoa Exchange	64,169.59
New York Mercantile/COMEX Exchange	240,870.26
New York Cotton/New York Futures Exchange	58,606.03
Kansas City Board of Trade	17,129.09
Minneapolis Grain Exchange	23,196.63
Philadelphia Board of Trade	2,622.61
Total	914,962.35

Second, the staff calculates the trading volume for the past three fiscal years to determine the cumulative volume for each exchange and its percentage of total volume across all exchanges during that same period. The trading volume figures for that period are as follows:

Exchange	FY 1993–1995 cumulative volume	Percentage of total volume across exchanges
Chicago Board of Trade	604,202,447	42.6254
Chicago Mercantile Exchange	530,733,388	37.4423
Coffee, Sugar and Cocoa Exchange	34,865,386	2.4597
New York Mercantile/COMEX Exchange	223,922,964	15.7974
New York Cotton/New York Futures Exchange	16,103,681	1.1361
Kansas City Board of Trade	4,888,383	0.3449

Exchange	FY 1993–1995 cumulative volume	Percentage of total volume across exchanges
Minneapolis Grain Exchange	2,644,863	0.1866
Philadelphia Board of Trade	107,875	0.0076
Total	1,417,468,987	100.0000

Finally, the staff calculates the current fees by applying the appropriate exchange data to the formula. The following is an example of how the rule enforcement and financial review fees for exchanges are calculated.

Example: The Minneapolis Grain Exchange (MGE) average annual cost is $23,196.63 and its percentage of total volume over the last three years is 0.1866. The annual average total cost for all exchanges during that same time period is $914,962.35. As a result, the MGE fee for fiscal 1996 is:

(.5)($23,196.63)+(.5)(.001866)($914,962.35) = current fee or $11,598.32 + $853.69 = $12,452.01

As stated in 1993 when the formula was adopted, if the calculated fee using this formula is higher than actual costs, the exchange pays actual costs. If the calculated fee using the formula is less than actual costs then the exchange pays the calculated fee. No exchange will pay more than actual costs. Also, if an exchange has no volume over the three-year period it pays a flat 50% of actual costs.

The National Futures Association (NFA) is a registered futures association which is responsible for regulating the practices of its members. In its oversight role, the Commission performs rule enforcement and financial reviews of the NFA. The Commission's average annual cost for reviewing the National Futures Association during fiscal years 1993 through 1995 is $255,333.91. The National Futures Association will continue to be charged 100% of its actual costs.

Based upon this formula the fees for all of the exchanges and the NFA for fiscal 1996 are as follows:

Exchange/NFA	1996 fee
Chicago Board of Trade	$264,915.17
Chicago Mercantile Exchange	243,452.97
Coffee, Sugar and Cocoa Exchange	43,337.95
New York Mercantile/COMEX Exchange	192,708.42
New York Cotton/New York Futures Exchange	34,480.14
Kansas City Board of Trade	10,142.47
Minneapolis Grain Exchange	12,452.01
Philadelphia Board of Trade	1,346.08
National Futures Association	255,333.91
Total	1,058,169.12

As in the calculation of fees in previous years, the fiscal 1996 fee for the Chicago Board of Trade includes the MidAmerica Commodity Exchange.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq,* requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as ''exchanges'') and registered futures associations. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered ''small entities'' by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

* * * * *

Issued in Washington, D.C., on April 29, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11014 Filed 5–02–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM95–4–002]

Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies

Issued April 29, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order On Clarification.

SUMMARY: On February 29, 1996, the Commission issued a notice adopting specifications for the electronic filing of the Index of Customers and discount transportation rate report. The electronic filing of these reports was required by Order No. 581. In response to a request for clarification, or in the

alternative rehearing, of the February 29 Notice filed by the National Registry of Capacity Rights, Inc., the Commission agrees with the Registry that several items in the electronic filing instruction manuals should be modified, and indicates that the Commission's staff will issue revised instruction manuals incorporating the modifications in the near future.

DATES: Pipelines must implement the data sets for the Index of Customers starting on April 1, 1996, and for the discount transportation rate report, starting with the first filing after April 1, 1996.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0491

Elizabeth A. Taylor, Office of Pipeline Regulation, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0826

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of the document during normal business hours in Room 2–A, 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal cumputer with a modem by dialing (202) 208–1397 if dialing locally or 1–800 856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2–A, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's bulletin board system can also be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem:

- Dial (703) 321–3339 and logon to the FedWorld system.
- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

On February 29, 1996, the Federal Energy Regulatory Commission (Commission) issued a notice adopting specifications for the electronic filing of the Index of Customers and discount transportation rate report.[1] The electronic filing of these reports was required by Order No. 581.[2] The National Registry of Capacity Rights, Inc. (the Registry) has filed an emergency request for clarification, or in the alternative, rehearing, of the February 29 Notice. The Registry seeks clarification of several items in the electronic filing instruction manuals adopted by the February 29 Notice.

I. Background

On September 28, 1995, the Commission issued Order No. 581, amending its Uniform System of Accounts, its forms, and its reports and statements for natural gas companies.[3] These changes include modifications to the Commission's electronic filing requirements. Specifically, interstate pipelines transporting or storing gas under subparts B and G of Part 284 of the Commission's regulations must now provide an electronic Index of Customers on their electronic bulletin boards (EBBs) through a downloadable file that is updated quarterly.[4] In addition, the discount rate report, previously filed only on paper, will now be filed both on paper and electronically.[5]

Although Order No. 581 imposed new electronic filing requirements, it did not include the final electronic filing specifications. The final electronic filing specifications were formulated by the Commission staff after several informal technical conferences with the industry, and were issued in the February 29 Notice. The February 29 Notice included two appendices: Appendix A was the ''Instruction Manual for Electronic Filing of the Index of Customers,'' and Appendix B was the ''Instruction Manual for Electronic Filing of the Discount Transportation Rate Report.''

On March 13, 1996, the Registry filed an emergency request for clarification, or in the alternative, rehearing, of the February 29 Notice. The Registry requests clarification of four items in the instruction manuals contained in Appendices A and B to the February 29 Notice. The clarifications sought are discussed below.

II. Discussion

First, the Registry seeks clarification of General Instruction 1(b) of both the *Instruction Manual for Electronic Filing of the Index of Customers* (Index of Customers instructions) and *Instruction Manual for Electronic Filing of the Discount Transportation Rate Report* (discount rate report instructions). Instruction 1(b) states, in part, that ''[i]f the respondent does not want to report a value for a specific data item on the record, then the data item can be omitted * * *.''[6] The Registry seeks clarification that this phrase was not intended to give respondents the discretion to choose whether to comply with the reporting requirements.

The Registry is correct. The statement purporting to give respondents discretion whether or not to comply with the reporting requirements was made unintentionally. All respondents subject to sections 284.106(c), and 284.223(b) of the Commission's regulations must comply with the Index of Customers instructions. Similarly, all respondents subject to section 284.7(c)(6) must comply with the discount rate report instructions. Therefore, to avoid any confusion, the passage the Registry quotes should be revised to read: ''If a data element is not applicable, the data element must be omitted, * * *.''

Second, the Registry seeks confirmation that the OMB control number listed on Appendices A and B

[1] The notice, entitled ''Notice Adopting Electronic Filing Specifications for Index of Customers and Discount Transportation Rate Report,'' is unreported. (February 29 Notice). 61 FR 8870, March 6, 1996.

[2] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995).

[3] *Id.*

[4] To be codified at 18 CFR 284.106(c) and 284.223(b). II FERC Stats. & Regs. ¶¶24,866 and 24,943. The file must also be filed with the Commission; however, no paper copies of the Index of Customers are required to be filed.

[5] To be codified at 18 CFR 284.7(c)(6). II FERC Stats. & Regs. ¶24,847.

[6] *Instruction Manual for Electronic Filing of the Index of Customers* at 4, and *Instruction Manual for Electronic Filing of the Discount Transportation Rate Report* at 4.

are valid OMB control numbers, and that no other OMB numbers are needed, in light of the boilerplate language contained in the General Information sections of the Appendices. Specifically, the language states that ''You [referring to the respondent] shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.'' [7] The Registry is concerned that if another number is needed, but not provided, then pipelines will not be required to comply with the new requirements.

Collections of information by federal government agencies are subject to the recently enacted Paperwork Reduction Act of 1995.[8] The Paperwork Reduction Act of 1995 revises the Paperwork Reduction Act of 1980.[9] The original act required that a data collection form display a valid OMB control number. In addition to this requirement, the new act requires that the OMB control number be displayed on the front page of the form.[10] Further, under the new rules, where the collection is accomplished through electronic formats, the control number must be placed near the title.[11] In compliance with these directives, the Index of Customers instructions and discount rate report instructions display a valid OMB control number on the front page immediately below the title. The OMB control number displayed below the title is valid, and is displayed according to applicable law. Further, no other OMB numbers are needed.

Third, the Registry suggests that in the Index of Customers instructions, ''General Information,'' more detailed language be used in the ''Purpose'' section. Specifically, the Registry proposes that the sentence, ''[t]he instructions herein will provide the format for the electronic dissemination of the data on the respondent's EBB, * * *'' be clarified to indicate that the dissemination of the data is by means of a downloadable file in the tab-delimited format, through the respondent's EBB.

The ''Purpose'' section of the Index of Customers instructions reads in its entirety:

> This data submission is required under 18 CFR § 284.106(c) and § 284.223(b), which state that each calendar quarter an interstate pipeline must file with the Commission an index of all of its firm transportation and storage customers under contract as of the first day of the calendar quarter. The pipeline must also post an electronic format of this information on its electronic bulletin board (EBB). The instructions herein will provide the format for the electronic dissemination of the data on the respondent's EBB, as well as the electronic file submitted to the Commission.[12]

The ''Purpose'' section states explicitly that the Index of Customers instructions apply to the file to be posted on the pipeline's EBB. Since the body of the instructions make very clear that a tab-delimited file format is to be used, there is no reason to add to the ''Purpose'' section the reference to the tab format that the Registry seeks.

However, there is nothing in the purpose section or the body of instructions that indicates that the file is to be downloadable, as required by the regulations referenced in the ''Purpose'' section, sections 284.106(c) and 284.223(b). To be aware of this fact, the reader would have to refer to the regulations themselves. To ensure that there is no confusion, the ''Purpose'' section should be clarified to include the fact that the file must be downloadable from the pipeline's EBB. Therefore, the last sentence of the ''Purpose'' section will be changed to read: ''The instructions herein will provide the format for the electronic dissemination of the data on the respondent's EBB in a downloadable file, as well as for the electronic file submitted to the Commission.''

Finally, because the Index of Customers instructions and discount rate report instructions, which are Appendices A and B, respectively, to the order, each have three subappendices that are also entitled ''Appendices'' A, B, and C, the Registry suggests that the subappendices be retitled to something other than ''appendices'' to prevent confusion. While the subappendices to the instruction manuals have titles that are the same as the titles of the appendices to the order, we do not anticipate that confusion will arise. The instruction manuals are disseminated through the Commission's public reference division, or from the bulletin board, as stand-alone documents. In other words, they will no longer be entitled, ''Appendix A'' and ''Appendix B.'' Thus, the only appendices associated with these electronic filing specifications will be Appendices A, B, and C of each instruction manual.

In addition to the above matters raised by the Registry, the Commission's staff has identified other minor matters in the Index of Customers instructions and discount rate report instructions that require clarification and/or modifications. These additional changes, and the changes discussed in this order, will be incorporated in a revised Index of Customers instruction manual and discount rate report instruction manual to be issued in the near future by the staff.[13]

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11049 Filed 5–02–96; 8:45 am]

BILLING CODE 6717–01–P

[7] *Instruction Manual for Electronic Filing of the Index of Customers* at 3, and *Instruction Manual for Electronic Filing of the Discount Transportation Rate Report* at 3.

[8] Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501–3520; to be codified at 5 CFR Part 1320.

[9] Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2826, amended 1986, formerly codified at 44 U.S.C. Chapter 35. These former regulations are contained in the 1995 and earlier versions of 5 CFR Part 1320.

[10] To be codified at 5 CFR 1320.3(f)(1).

[11] To be codified at 5 CFR 1320.3(f)(2).

[12] *Instruction Manual for Electronic Filing of the Index of Customers* at 2.

[13] *See* 75 FERC ¶ 61,009 (1996), where the Commission authorized staff to issue further electronic and paper filing specifications related to the forms modified by Order Nos. 581 and 582.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 10

[T.D. 96–35]

RIN 1515–AB93

Suspension of United States-Canada Free-Trade Agreement Implementing Regulations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations implementing the duty preference provisions of the United States-Canada Free-Trade Agreement (CFTA) to reflect that operation of the CFTA was suspended, by agreement of the Governments of the United States and Canada, as a result of the entry into force of the North American Free Trade Agreement (NAFTA) on January 1, 1994. The CFTA implementing regulations in question remain in effect only with regard to merchandise imported from Canada that was entered or withdrawn from warehouse for consumption prior to the entry into force of the NAFTA.

EFFECTIVE DATE: May 3, 1996.

FOR FURTHER INFORMATION CONTACT: Myles Harmon, Office of Regulations and Rulings (202–482–7000).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1988, the United States and Canada entered into the United

States-Canada Free-Trade Agreement (CFTA), the objectives of which included the elimination of Customs duties and other barriers to trade in goods and services between the two countries. The provisions of the CFTA were adopted by the United States with the enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100–449, 102 Stat. 1851, and the CFTA went into effect on January 1, 1989. Regulations setting forth the basic legal and procedural requirements for obtaining preferential duty treatment on imported merchandise under the CFTA are contained in §§ 10.301 through 10.311 of the Customs Regulations (19 CFR 10.301 through 10.311).

On December 17, 1992, the United States, Canada and Mexico entered into the North American Free Trade Agreement (NAFTA). As in the case of the CFTA, the stated objectives of the NAFTA include the elimination of barriers to trade in goods and services between the territories of the three countries. The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, and the NAFTA went into effect on January 1, 1994. Interim regulations implementing the Customs-related provisions of the NAFTA were published in the Federal Register as T.D. 94–1 on December 30, 1993 (58 FR 69460), and final NAFTA implementing regulations were published as T.D. 95–68 on September 6, 1995 (60 FR 46334); the majority of those NAFTA regulations are set forth in part 181 of the Customs Regulations (19 CFR part 181).

In view of the similarity between the objectives of the CFTA and those of the NAFTA, the United States and Canada recognized that, in principle, there would be no need to continue the operation of the CFTA upon accession to, and entry into force of, the NAFTA. Accordingly, by an exchange of letters dated December 30, 1993, the Governments of the United States and Canada formally agreed, subject to certain transitional arrangements not involving preferential duty treatment, to suspend the operation of the CFTA upon the entry into force of the NAFTA, with the suspension to remain in effect for such time as the two Governments are Parties to the NAFTA.

Customs believes that the present CFTA implementing regulations are unclear as regards their applicability because they do not reflect the fact that the operation of the CFTA has been suspended as a result of the entry into force of the NAFTA. On the other hand, Customs notes that those regulations must be retained because they continue to have application to Customs transactions involving merchandise imported from Canada that was entered or withdrawn from warehouse for consumption during the period in which the CFTA was in effect (that is, from January 1, 1989, through December 31, 1993).

In order to address the considerations mentioned above, this document revises § 10.301 (Scope) to include references both to the suspension of the CFTA and to the circumstances in which the CFTA regulations continue to have application.

Inapplicability of Public Notice and Comment Procedures and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice and comment procedures are inapplicable to this final rule because it is within the foreign affairs function of the United States. In addition, for the above reason and because this regulatory amendment involves no substantive change but rather merely conforms the regulations to present law, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a 30-day delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Since the amendment is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).*

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

Amendment to the Regulations

For the reasons set out in the preamble, part 10 of the Customs Regulations (19 CFR part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

2. Section 10.301 is revised to read as follows:

§ 10.301 Scope and applicability.

The provisions of §§ 10.302 through 10.311 of this part relate to the procedures for obtaining duty preferences on imported goods under the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851). The United States and Canada agreed to suspend operation of the Agreement with effect from January 1, 1994, to coincide with the entry into force of the North American Free Trade Agreement (see part 181 of this chapter) and, accordingly, the provisions of §§ 10.302 through 10.311 of this part apply only to goods imported from Canada that were entered for consumption, or withdrawn from warehouse for consumption, during the period January 1, 1989, through December 31, 1993. In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to Article 407 of the Agreement.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: March 29, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–11007 Filed 5–02–96; 8:45 am]

BILLING CODE 4820–02–P

19 CFR Part 103

[T.D. 96–36]

RIN 1515–AB58

Disclosure or Production of Customs Information Pursuant to Legal Process

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules that clarify the procedures to be followed when subpoenas or other demands of courts and other authorities,

except Congress, are issued to compel the disclosure or production of Customs information, *i.e.*, documents, information, or employee testimony, for use in federal, state, local, and foreign proceedings. The procedures will be applicable to current and former Customs employees and to litigants who seek to compel Customs employees to disclose or produce Customs information. Specifically, the amendments will place in the Office of the Chief Counsel the authority to make determinations concerning the disclosure of such information to ensure the more efficient use of Customs personnel resources in responding to requests in a timely manner. The amendments also restructure the general organizational scheme of Part 103 of the Customs Regulations to clarify their application.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew McConkey, Office of the Chief Counsel (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Customs enforces some 600 laws for 60 agencies while facilitating the flow of merchandise in international commerce. In addition to maintaining records relevant to its enforcement functions, Customs also maintains information that has a bearing on other law enforcement provisions. Many of the records Customs maintains contain confidential business information subject to the Trade Secrets Act, 18 U.S.C. 1905, which prohibits the unauthorized disclosure of such information by an officer or employee of the United States.

Regulations pertaining to Customs release of information, *i.e.*, documents, information, or employee testimony, subpoenaed for use in judicial proceedings are found at § 103.17 of the Customs Regulations (19 CFR 103.17). But while § 103.17 provides some procedures regarding the disclosure of information, *e.g.*, the testimony of employees, and the production of documents pursuant to a subpoena *duces tecum* in cases both where the agency is and is not a party to a legal proceeding, it does not adequately describe the procedures for determining whether and how the information should be released in response to such demands.

On September 6, 1994, Customs published a document in the Federal Register (59 FR 46007) proposing to amend the Customs Regulations to clarify the procedures to be followed when subpoenas or other demands of courts and other authorities, except Congress, are issued to compel the disclosure or production of Customs information for use in various proceedings. The procedures would be applicable to current and former Customs employees and to litigants who seek to compel Customs employees to disclose or produce Customs information. Specifically, the proposed amendments sought to place in the Office of the Chief Counsel the responsibility to make determinations concerning the disclosure of such information to ensure the more efficient use of Customs personnel resources in responding to requests in a timely manner. The amendments also proposed to restructure the general organizational scheme of part 103 of the Customs Regulations to clarify their application. The notice proposed to revise two sections (§§ 103.0 and 103.17), renumber five sections (§§ 103.14 through 103.18), and create six new sections (§§ 103.22 through 103.27) of the Customs Regulations. The notice also solicited comments concerning these changes.

The comments received and Customs responses to them are set forth below.

Discussion of Comments

Two comments were received—one from a Bar Association, the other from a group of undergraduate business students—that raised three areas of concern: (1) Centralizing decisions over the disclosure process; (2) agency assertion of privilege and the role of discovery; and (3) the omission of *in camera* disclosure provisions. We address these concerns in turn.

Centralizing Decisions Over the Disclosure Process

Comment: Both commenters protested the concept of centralized decision-making concerning the disclosure process as likely to increase the inefficiency of a bureaucracy given that centralization requires the central decision-maker to find the information demanded, analyze it, etc. These commenters argue that the offices having the information demanded are in closer contact with the information and should have the authority to decide whether to comply with demand.

Customs Response: As a general proposition, Customs believes that it is appropriate to fix the responsibility for legal review of subpoena issues within one office. It was, perhaps, misleading to state in the proposed rule that the transferring of responsibility for legal review of subpoena issues to the Office of Chief Counsel was a centralizing move. Decisions concerning the disclosure or production of Customs information pursuant to legal process are now handled by the Disclosure Law Branch of the Office of Regulations and Rulings, which has offices only at Customs Headquarters in Washington, D.C. By placing the decision-making process regarding subpoena demands for information in the Office of the Chief Counsel, the amendments to the regulations actually serve to decentralize the processing of such information demands, as the Office of the Chief Counsel has a field presence throughout the United States. Thus, the processing of subpoena demands should be handled more efficiently than when all such demands were handled by the one office in Washington, D.C.

Agency Assertion of Privilege and the Role of Discovery

Comment: Stating that the proposed regulations are not as even-handed as the present regulations in allowing for privilege claims, a commenter proposed adding language to § 103.21(e), which concerns disclosure of information to government law enforcement or regulatory agencies, and § 103.26, which concerns procedures in the event of a demand for Customs information in a state or local criminal proceeding, to reflect disclosure limitations, *i.e.*, scope of privileges, contained in § 103.12, which concerns Freedom of Information Act (FOIA) exemptions from disclosure. The commenter states that these two regulatory provisions should be more explicit as to what information can be turned over and on whose authority and suggests that language be added to more appropriately apprise Customs field personnel of their duty to refer certain matters to Customs Headquarters.

Customs Response: Customs does not agree with the commenter. Sections 103.21(e) and 103.26 are located in subpart B of the Customs Regulations, which concerns disclosure of Customs information pursuant to legal process for use in legal proceedings; however, the disclosure limitations of concern (§ 103.12) are located in subpart A of the regulations, which concerns disclosure of Customs information pursuant to various disclosure laws. This means that the exemptions available under provisions in subpart A are not available under provisions in subpart B. On a separate note, the Office of the Chief Counsel does not process information requests under subpart A, only those under subpart B. Accordingly, no change to the proposed regulations is made based on this comment.

Comment: A commenter stated that the provisions of § 103.21(f) are inadequate to protect the orderly functioning of the discovery process in

that they allow the Government to frustrate discovery requests solely by asserting that regulation as the reason for objection to discovery requests, compelling parties to resort to judicial intervention to resolve matters of asserted privilege. The commenter stresses the point that if the Government wishes to assert a non-disclosure privilege in any action before the Court of International Trade (CIT) (particularly in discovery), then such privilege should be asserted by its attorneys with specific references to the discovery request and which privilege is claimed, i.e., executive, statutory, or evidentiary. Accordingly, to make it clear that non-government attorneys should not have to make special discovery requests of the Chief Counsel's office to carry on discovery against the United States nor have to resort to the Court to enforce discovery demands, the commenter suggests that language be added to § 103.21(f) indicating this.

Customs Response: Customs believes that § 103.21(f) need not be changed. Section 103.21(f) is not a substantive provision, but rather a statement of purpose, that is not subject to the general prohibition provisions contained at § 103.22, which only pertain to proceedings in which *Customs is not a party* (emphasis added).

In the notice of proposed rulemaking, it was stated, regarding paragraph (f) of § 103.21, that this paragraph serves to limit the scope of the proposed regulations by providing that it is not intended to impede or restrict the appropriate disclosure of any information to certain federal attorneys and judges in connection with Customs cases—*i.e.*, when the Customs Service is a party—referred by the Department of the Treasury to the Department of Justice for prosecution or defense. The comment presumes that the regulatory provision proposed by Customs will control when the agency is a party before an Article III court, which cannot be; the Court's rules of procedure will, of course, control such a proceeding. Accordingly, no change to this regulatory provision is made based on this comment; however, the heading of § 103.22 is revised to reflect the fact that the procedures thereunder only pertain when the Customs Service is not a party to the litigation or proceeding.

Omission of In Camera Disclosure Provisions

Comment: A commenter stated that the provisions of current § 103.17(d), which provide for *in camera* review of documents, are not extended to certain other criminal actions. While the commenter believes that proposed § 103.21(f) confers the right of *in camera* inspection on judges of the CIT, he states that such an extension is not evident in the provisions of proposed § 103.26, which pertains to criminal proceedings in other federal courts. Accordingly, the commenter suggests that Customs amend its regulations to allow for turnover of its information to state and local law enforcement officers.

Customs Response: Although the comment seems to present two different issues *in camera* disclosure to judges and disclosure to law enforcement personnel), Customs does not agree that *in camera* inspection of records and documents in state or local criminal proceedings is not present in § 103.26. Regarding *in camera* disclosure of Customs documents to any court (State or Federal, whether civil or criminal), it is within the inherent power of a court of competent jurisdiction to order *in camera* disclosure of Customs documents. Regarding disclosure to state and local law enforcement officers, as provided at § 103.21(e), nothing in this subpart is intended to impede the appropriate disclosure of information, in keeping with the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905), by Customs to federal, state, local, and foreign law enforcement or regulatory agencies. Nevertheless, because of the concern expressed over Customs perceived ability to withhold records from a court of competent jurisdiction, Customs has no hesitation in adding the former *in camera* provisions of § 103.17(d) as new § 103.21(i). Accordingly, a provision is added to the final regulations providing that nothing in new subpart B authorizes Customs personnel to withhold records from a federal court, whether civil or criminal, pursuant to its order for such records appropriately made, for purposes of *in camera* inspection of the records to determine the propriety of claimed exemption(s) from disclosure.

Other Matters

Three other procedural changes to the proposed regulations are made and a referencing (typographical) error is corrected at this time. The first procedural change, a change to § 103.22(d), increases the processing time from 5 days to 10 days. This change is made because Customs wishes to ensure that demands for Customs information can be met by available staff. The second and third procedural changes, to § 103.23(b), add two subparagraphs to provide for two additional circumstances where disclosure will not be made: failure to make proper service upon the United States (§ 103.23(b)(10)), and failure to comply with federal, state, or local rules of discovery (§ 103.23(b)(11)). Although these grounds for not authorizing disclosure are readily contained in both civil and criminal rules of procedure throughout the United States, the presence of either of these facts at the agency level will help the Office of the Chief Counsel to summarily respond to such requests. The typographical error concerns a reference in § 103.25 to § 103.22; it should read § 103.24 to reflect the statement in the **BACKGROUND** portion of the notice that the new § 103.25 concerns ''the preceding section'' *i.e.*, § 103.24.

Unrelated to subpoenas, this document also amends § 103.6, concerning the initial handling of requests for information pursuant to the FOIA, to reflect that the initial determination regarding such requests for information maintained in the field shall be made by the appropriate director of a service port, or in the case of records of the Office of Investigations, the appropriate special agent in charge. The regulations currently do not distinguish between records of the Office of Investigations and other records regarding who shall make the initial determination concerning their release.

Conclusion

Based on the comments received and further consideration by Customs, Customs has decided to finalize the amendments proposed with the following changes: In § 103.21, a new paragraph (i) is added to continue authorizing *in camera* inspections by any court; in § 103.22(d), the processing time of requests is increased from five to ten days; and in § 103.23(b), subparagraphs (10) and (11) are added providing additional circumstances where disclosure will not be made: where there is a failure to make proper service upon the United States, and where there is a failure to comply with federal, state, or local rules of discovery. Further, the heading of § 103.22 is revised to make it clear that the procedures thereunder only pertain when the Customs Service is not a party to the litigation or proceeding and the referencing (typographical) error in § 103.25 to § 103.22 is corrected to reference § 103.24. Also, references to certain Customs field organization designations, *i.e.*, district directors and regional commissioners, are revised to reference port directors to account for Customs reorganization. Lastly, certain editorial changes are made to make clear the relationship between (1) the Office

of the Chief Counsel, (2) its field counsel, (3) Customs employees served with demands, and (4) the official in charge of the originating component.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the regulations will not have a significant impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects in 19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of Information, Law enforcement, Privacy, Reporting and recordkeeping requirements, Subpoenas.

Amendment to the Regulations

For the reasons set forth above, part 103, Customs Regulations (19 CFR part 103), is amended as set forth below:

PART 103—AVAILABILITY OF INFORMATION

1. The table of contents of part 103 is revised to read as set forth below to reflect the amendments that follow:

§§ 103.31, 103.33, 103.34 [Amended]

2. The general authority citation for part 103 is revised and specific authority citations for §§ 103.31, 103.33, and 103.34 are added to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701. Section 103.31 also issued under 19 U.S.C. 1431; Section 103.33 also issued under 19 U.S.C. 1628; Section 103.34 also issued under 18 U.S.C. 1905.

3. Section 103.0 is revised to read as follows:

§ 103.0 Scope.

This part governs the production/ disclosure of agency-maintained documents/information requested pursuant to various disclosure laws and/or legal processes. Thus, the extent of disclosure of requested information may be dependent on whether the request is pursuant to the provisions of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and/or under other statutory or regulatory authorities, as required by administrative and/or legal processes. The regulations for this part contain a discussion of applicable fees for the search, duplication, review, and other tasks associated with processing information requests pursuant to the FOIA, and also provide for the appeal of agency decisions and sanctions for the improper withholding and/or the untimely release of requested information. As information obtained by Customs is derived from a myriad of sources, persons seeking information should consult with a disclosure law officer, the director of a service port, or the local public information officer before invoking the formal procedures set forth in this part. These regulations supplement the regulations of the Department of the Treasury regarding public access to records, which are found at 31 CFR part 1, and, in the event of any inconsistency between these regulations and those of the Department of the Treasury, the latter shall prevail. For purposes of this part, the Office of the Chief Counsel is considered a part of the United States Customs Service.

§§ 103.1–103.13 [Amended]

4. Sections 103.1 through 103.13 are designated as subpart A and a new heading for subpart A is added to read as follows:

Subpart A—Production of documents/ disclosure of information under the FOIA

5. In § 103.6, paragraph (a)(1) is revised to read as follows:

§ 103.6 Grant or denial of initial request.

(a) *Officers designated to make initial determinations*—(1) *Service ports.* The appropriate director of a service port, or in the case of records of the Office of Investigations, the appropriate special agent in charge (SAC), shall make any initial determination of a request for a record which is maintained, respectively, at that service port or under the SAC's jurisdiction.

* * * * *

§§ 103.14, 103.15, 103.16, 103.18 [Redesignated as §§ 103.31, 103.34, 103.32, 103.33]

6. Sections 103.14, 103.15, 103.16, and 103.18 are redesignated as §§ 103.31, 103.34, 103.32, and 103.33, respectively, and designated as subpart C and a new heading for subpart C is added to read as follows:

Subpart C—Other Information Subject to Restricted Access

§ 103.17 [Removed]

7. Section 103.17 is removed.

8. A new subpart B, consisting of §§ 103.21 through 103.27, is added to read as follows:

Subpart B—Production or disclosure in Federal, State, Local, and Foreign proceedings

§ 103.21 Purpose and definitions.

(a) *Purpose.* (1) This subpart sets forth procedures to be followed with respect to the production or disclosure of any documents contained in Customs files, any information relating to material contained in Customs files, any testimony by a Customs employee, or any information acquired by any person as part of that person's performance of

official duties as a Customs employee or because of that person's official status, hereinafter collectively referred to as ''information'', in all federal, state, local, and foreign proceedings when a subpoena, notice of deposition (either upon oral examination or written interrogatory), order, or demand, hereinafter collectively referred to as a ''demand'', of a court, administrative agency, or other authority is issued for such information.

(2) This subpart does not cover those situations where the United States is a party to the action. In situations where the United States is a party to the action, Customs employees are instructed to follow internal Customs policies and procedures.

(b) *Customs employee.* For purposes of this subpart, the term ''Customs employee'' includes all present and former officers and employees of the United States Customs Service.

(c) *Customs documents.* For purposes of this subpart, the term ''Customs documents'' includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any Customs employee while acting in his/her official capacity, or because of his/her official status, with respect to the administration or enforcement of laws administered or enforced by the Customs Service.

(d) *Originating component.* For purposes of this subpart, the term ''originating component'' references the Customs official, or the official's designee, in charge of the office responsible for the collection, assembly, or other preparation of the information demanded or that, at the time the person whose testimony is demanded acquired the information in question, employs or employed the person whose testimony is demanded.

(e) *Disclosure to government law enforcement or regulatory agencies.* Nothing in this subpart is intended to impede the appropriate disclosure of information by Customs to federal, state, local, and foreign law enforcement or regulatory agencies, in accordance with the confidentiality requirements of the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other applicable statutes.

(f) *Disclosure to federal attorneys and the Court of International Trade.* Nothing in this subpart is intended to restrict the disclosure of Customs information requested by the Court of International Trade, U.S. Attorneys, or attorneys of the Department of Justice, for use in cases which arise under the laws administered or enforced by, or concerning, the Customs Service and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(g) *Disclosure of non-Customs information.* Nothing in the subpart is intended to impede the appropriate disclosure of non-Customs information by Customs employees in any proceeding in which they are a party or witness solely in their personal capacities.

(h) *Failure of Customs employee to follow procedures.* The failure of any Customs employee to follow the procedures specified in this subpart neither creates nor confers any rights, privileges, or benefits on any person or party.

(i) *In camera inspection of records.* Nothing in this subpart authorizes Customs personnel to withhold records from a federal court, whether civil or criminal, pursuant to its order for such records appropriately made, for purposes of *in camera* inspection of the records to determine the propriety of claimed exemption(s) from disclosure.

§ 103.22 Procedure in the event of a demand for Customs information in any federal, state, or local civil proceeding or administrative action.

(a) *General prohibition against disclosure.* In any federal, state, or local civil proceeding or administrative action in which the Customs Service is not a party, no Customs employee shall, in response to a demand for Customs information, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior written approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand for information is made upon a Customs employee, that employee shall immediately prepare a report that specifically describes the testimony or documents sought and notify the Assistant Chief Counsel or Associate Chief Counsel for the area where the employee is located. If the employee is located at Headquarters or outside of the United States, the employee shall immediately notify the Chief Counsel. The Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Requesting party's initial burden.* A party seeking Customs information shall serve on the appropriate Customs employee the demand, a copy of the Summons and Complaint, and provide an affidavit, or, if that is not feasible, a statement that sets forth a summary of the documents or testimony sought and its relevance to the proceeding. Any disclosure authorization for documents or testimony by a Customs employee shall be limited to the scope of the demand as summarized in such affidavit or statement. The Chief Counsel may, upon request and for good cause shown, waive the requirements of this paragraph.

(d) *Requesting party's notification requirement.* The demand for Customs information, pursuant to the provisions of paragraph (c) of this section, shall be served at least ten (10) working days prior to the scheduled date of the production of the documents or the taking of testimony.

(e) *Counsel notification to originating component.* Upon receipt of a proper demand for Customs information, one which complies with the provisions of paragraph (c) of this section, if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(f) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the provisions of paragraph (h) of this section, may authorize the production of Customs documents or the appearance and testimony of a Customs employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(g) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of Customs information by a Customs employee without further authorization from Customs officials whenever possible, *provided* that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

(h) *Disclosure of commercial information.* In the case of a demand for commercial information or commercial documents concerning importations or exportations, the Chief Counsel shall obtain the authorization of the Assistant Commissioner (Field Operations) or his/her designee prior to the Chief Counsel authorizing the production/disclosure of such documents/information.

§ 103.23 Factors in determining whether to disclose information pursuant to a demand.

(a) *General considerations.* In authorizing disclosures pursuant to a proper demand for Customs information, one which complies with the provisions of § 103.22(c), the Chief Counsel should consider the following factors:

(1) Whether the disclosure would be appropriate under the relevant substantive law concerning privilege;

(2) Whether the disclosure would be appropriate under the rules of procedure governing the case or matter in which the demand arose; and,

(3) Whether the requesting party has demonstrated that the information requested is:

(i) Relevant and material to the action pending, based on copies of the summons and complaint that are required to be attached to the subpoena *duces tecum* or other demand;

(ii) Genuinely necessary to the proceeding, *i.e.*, a showing of substantial need has been made;

(iii) Unavailable from other sources; and,

(iv) Reasonable in its scope, *i.e.*, the documents, information, or testimony sought are described with particularity.

(4) Whether consultation with the originating component requires that the Chief Counsel make a separate determination as to the disclosure of the information requested.

(b) *Circumstances where disclosure will not be made.* Among the demands in response to which disclosure will not be authorized by the Chief Counsel are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a treaty, statute (such as the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905, or the income tax laws, 26 U.S.C. 6103 and 7213), or a rule of procedure, such as the grand jury secrecy rule, Fed.R.Crim.Proc. rule 6(e) (18 U.S.C.App.);

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified or confidential information;

(4) Disclosure would reveal a confidential source or informant;

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, interfere with enforcement proceedings, or disclose investigative techniques and procedures;

(6) Disclosure would improperly reveal confidential commercial information without the owner's consent (*e.g.*, entry information);

(7) Disclosure relates to documents which were produced by another agency or entity;

(8) Disclosure would unduly interfere with the orderly conduct of Customs business;

(9) Customs has no interest, records, or other official information regarding the matter in which disclosure is sought;

(10) There is a failure to make proper service upon the United States; or

(11) There is a failure to comply with federal, state, or local rules of discovery.

§ 103.24 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the Chief Counsel are received, the U.S. Attorney, his/her assistant, or other appropriate legal representative shall be requested to appear with the Customs employee upon whom the demand has been made. The U.S. Attorney, his/her assistant, or other appropriate legal representative shall furnish the court or other authority with a copy of the regulations contained in this subpart, inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Chief Counsel, and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 103.25 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the demand in response to a request made in accordance with § 103.24 pending receipt of instructions, or rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 103.22, 103.23, 103.26, or 103.27 of this subpart not to produce the documents or disclose the information sought, the Customs employee upon whom the demand has been made shall, pursuant to this subpart, respectfully decline to comply with the demand. *See, United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 103.26 Procedure in the event of a demand for Customs information in a state or local criminal proceeding.

Port directors, special agents in charge, and chiefs of field laboratories may, in the interest of federal, state, and local law enforcement, upon receipt of demands of state or local authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings on behalf of the government in any state or local criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a state or local criminal case demands testimony or the production of Customs documents or information, authorization from the Chief Counsel is required as under § 103.22 of this subpart. No disclosure of information under this section shall be made if any of the factors listed in § 103.23(b) of this subpart are present.

§ 103.27 Procedure in the event of a demand for Customs information in a foreign proceeding.

(a) *Required prior approval for disclosure.* In any foreign proceeding in which the Customs Service is not a party, no Customs employee shall, in response to a demand, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand in a foreign proceeding is made upon a Customs employee concerning pre-clearance activities within the territory of the foreign country, that employee shall immediately notify the appropriate Associate Chief Counsel responsible for the pre-clearance location. All other demands in a foreign proceeding shall be reported by Customs employees to the Chief Counsel. The Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Counsel notification to originating component.* Upon receipt of a proper demand for Customs information, one which complies with the provisions of § 103.22(c), if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(d) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the terms of paragraph (e) of this section, may authorize the disclosure of Customs documents or the appearance and testimony of a Customs employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(e) *Limitations on the scope of authorized disclosure.*

(1) The Chief Counsel shall authorize the disclosure of Customs information by a Customs employee without further authorization from Customs officials whenever possible, provided that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

William F. Riley,

Acting Commissioner of Customs.

Approved: December 14, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–11006 Filed 5–2–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 126

[Public Notice 2346]

Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Russian Federation. All requests for approval involving items covered by the U.S. Munitions List will be reviewed on a case-by-case basis.

EFFECTIVE DATE: April 3, 1996.

FOR FURTHER INFORMATION CONTACT:

Gordon J. Stirling, Office of Arms Export and Export Control Policy, Bureau of Political-Military Affairs, Department of State (202/647–0397).

SUPPLEMENTARY INFORMATION: In connection with the President's policy that U.S. laws and regulations be updated to reflect the end of the Cold War, the Department of State is amending the ITAR to reflect that it is no longer the policy of the United States, pursuant to § 126.1, to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Russian Federation. Requests for licenses or other approvals for Russia involving items covered by the U.S. Munitions List (22 CFR part 121) will no longer be presumed to be disapproved.

This amendment to the ITAR involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

In accordance with 5 U.S.C. 808, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (the ''Act''), the Department of State has found for foreign policy reasons that notice and public procedure under section 251 of the Act is impracticable and contrary to the public interest.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, under the authority of Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and Executive Order 11958, as amended, 22 CFR subchapter M is amended as follows:

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 41 FR 4311; E.O. 11322, 32 FR 119; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28206.

§ 126.1 [Amended]

2. Section 126.1 is amended by removing ''Russia,'' from paragraph (a).

Dated: April 23, 1996.

Lynn E. Davis,

Under Secretary of State for Arms Control and International Security Affairs.

[FR Doc. 96–11090 Filed 5–2–96; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 96–007]

RIN 2115–AA97

Safety Zone; Dana Point, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States offshore from Capistrano Beach to San Mateo Point, California in the vicinity of the 3rd Annual Dana Point Challenge (offshore powerboat race) on May 19, 1996. The safety zone boundaries are as follows: commencing at latitude 33°26.0′ N, 117°42.0′ W; thence to 33°27.0′ N, 117°41.3′ W; thence 33°24.0′ N, 117°37.0′ W; thence to 33°23.2′ N, 117°38.0′ W; thence returning to the point of beginning. This safety zone is necessary to ensure the safety of contestant and spectator vessels involved with the 3rd Annual Dana Point Challenge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This safety zone is in effect on May 19, 1996, from 10 a.m. PDT until 4 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mark T. Cunningham, Chief, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802; (310) 980–4454.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since the details of the safety zone boundaries and marine event permit were not finalized until a date fewer than 30 days prior to the event date.

Discussion of Regulation

This regulation is necessary to ensure the safety of contestant and spectator vessels involved with the 3rd Annual Dana Point Challenge powerboat race. The planned course of the race is approximately one mile offshore and extends from Capistrano Beach to San Mateo Point, California. Many spectator vessels (estimated 500–600 in 1995) have previously attended this event. In past years, contestants (approximately 20–25) had to speed around spectator vessels which had wandered into the race lanes. By deterring the large amount of expected spectator vessel traffic from entering into the designated race lanes, the risk of high speed collisions can be greatly reduced from that of previous Dana Point Challenges. This safety zone will be enforced by U.S. Coast Guard personnel. The Coast Guard Auxiliary, the Dana Point Harbor Patrol and the Dana Point Challenge event staff will assist in the enforcement of the safety zone. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the Safety Zone unless authorized by the Captain of the Port of his designated representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation. An environmental analysis checklist has been completed and a Marine Event permit has been issued.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for 33 CFR part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.T11–057 is added to read as follows:

§ 165.T1157 Safety Zone: Dana Point, CA

(a) *Location.* The following area constitutes a safety zone on the navigable waters in the vicinity of Capistrano Beach and San Mateo Point, California, specifically:

North-West corner: 33°26.0′ N, 117°42.0′ W; North-East corner: 33°27.0′ N, 117°41.3′ W; North-East corner: 33°24.0′ N, 117°37.0′ W; North-West corner: 33°23.2′ N, 117°38.0′ W.

This area measures approximately five nautical miles by one nautical mile. (Datum: NAD 83)

(b) *Effective Date.* This safety zone is effective at 10 A.M. PDT and terminates at 2 P.M. PDT on May 19, 1996 unless canceled earlier by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. No person or vessel may enter or remain within the safety zone without the permission of the Captain of the Port Los Angeles-Long Beach, California or his designated representative.

Dated: April 24, 1996.

E. E. Page,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 96–10998 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3333 and FAP2H5640/R2234; FRL–5365–6]

RIN 2070–AB78

Cyromazine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a tolerance for combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its major metabolite melamine, 1,3,5-triazine-2,4-6-triamine calculated as cyromazine in or on the raw agricultural commodity (RAC) tomato. The regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by the CIBA-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419.

EFFECTIVE DATE: This regulation becomes effective May 3, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 6F3333 and FAP2H5640/R2234], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests must be identified by the docket number [PP 6F3333 and

FAP2H5640/R2234]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) [13], Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305-6100; e-mail: glarocca@epamail.epa.gov

SUPPLEMENTARY INFORMATION: In the Federal Register of March 19, 1986 (51 FR 9511) and June 10, 1992 (57 FR 2467) EPA issued notices of filing which announced that Ciba-Geigy Corp. (CIBA), P.O. Box 18300, Greensboro, NC 27419 had submitted pesticide petition (PP 6F3333) and Food/Feed Additive Petition (FAP) 2H5640 to EPA proposing to amend 40 CFR 180.414 by establishing a tolerance under section 408 (d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) plus its major metabolite melamine, 1,3,5-triazine-2,4-6-triamine calculated as cyromazine in or on the raw agricultural commodity tomato at 1.0 parts per million (ppm) and proposing to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation under section 409(e) of FEDCA 21 U.S.C. 348(b) for combined residues of cyromazine and its metabolite in/on processed tomato products at 1.2 ppm and dried tomato pomace at 1.6 ppm. Further in the Federal Register of March 10, 1993 (58 FR 13261), Ciba amended PP 6F3333 by lowering the tolerance for combined residues of the insecticide cyromazine plus its metabolite melamine, in or on the raw agricultural commodity tomato from 1.0 ppm to 0.5 ppm. The petitions for tomato and processed tomato products were again amended in the Federal Register of October 25, 1995 (60 FR 54689) by proposing to raise the tolerance in tomatoes to 1.0 ppm and proposing tolerances in or on processed tomato products (excluding juice) at 2.5 ppm and tomato pomace, wet and dry at 2.5 ppm. In addition Ciba proposed to amend 40 CFR 180.414 by:

(1) Establishing separate tolerances for residues of cyromazine and its major metabolite melamine, calculated as cyromazine, in meat, fat, and meat by-products (including liver and kidney) of cattle, goats, hogs, horses, and sheep at 0.05 ppm and milk at 0.02 ppm under Sections 180.414(b) and (c) respectively.

(2) Establish as a separate tolerance for residues of the metabolite 1-methylcyromazine (1-methyl-*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in liver and kidney of cattle, goats, hogs, horses and sheep at 0.05 ppm, and

(3) Amending the established tolerances for cyromazine and melamine in or on fat, meat and meat-by-products of chickens, under 40 CFR 180.414 (b) and (c) by removal of the restriction ''from chicken layer hens and chicken breeder hens only''.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing.

The scientific data submitted in the petition and other relevant material have been evaluated. A discussion of the toxicological data considered in support of the tolerance as well as a discussion of the risk of cyromazine and its metabolite melamine can be found in a rule (FAP 2H5355/P344) published in the Federal Register of April 27, 1984 (48 FR 18120); in the Notice of Conditional Registration for Larvadex 0.3% Premix, published in the Federal Register of May 15, 1985 (50 FR 20373); and in the proposed rule regarding the establishment of a tolerance for residues of cyromazine and its metabolite melamine, calculated as cyromazine, in or on mushroom at 10.0 ppm in the Federal Register of June 30, 1993 (58 FR 34972).

A chronic dietary exposure/risk assessment has been performed for cyromazine using a reference dose (RfD) of 0.0075 mg/kg bwt/day. The reference dose is based on the no-observable-effect-level (NOEL) of 0.75 mg/kg bwt/day from a 6–month dog feeding study with an uncertainty factor (UF) of 100 that demonstrated decreased hematocrit and hemoglobin levels. Granting the tolerance on tomato will increase the theoretical maximum residue contribution (TMRC) for the overall (average) U.S. population for cyromazine from 0.001788 mg/kg/day to 0.002011 mg/kg/day. The percentage of the RfD used is increased from 24 percent to approximately 26.8%. Generally speaking the Agency has no concern if dietary exposure is less than the Rfd for all published and proposed tolerances.

Cyromazine was previously classified by the Agency as a Group C-possible human carcinogen, with the Reference Dose (RfD) methodology recommended for estimation of human risk (see the Federal Register of June 30, 1993 (58 FR 34972)). Ciba subsequently submitted a reexamination (by a reviewing pathologist and a pathology working group) of the tissues from the cyromazine chronic feeding and carcinogenicity studies in both rat and mouse. Based on a review of this information by the Health Effects Division Carcinogenicity Peer Review Committee (CPRC) of the Office of Pesticide Programs, the Agency has determined that cyromazine should be reclassified to Group E-no evidence for carcinogenicity in humans. The consensus of the CPRC was that the reexamination of mammary gland tissues in the mouse and rat was performed in an acceptable manner and based on these revised data, there were no statistically significant increases in tumors in the treated groups, and there were no statistically significant trends. Therefore, the classification of cyromazine has been revised to Group E in accordance with Agency guidelines, published in the Federal Register of September 24, 1986 (51 FR 33992).

The Agency has modified and updated its policy concerning whether concentration occurs in processed foods. In the past, EPA has found that a food additive tolerance (section 409) is necessary whenever a pesticide concentrates in the processed food (i.e., the levels in parts per million are greater in the processed food than in the raw food). The National Food Processors Association (NFPA) raised a number of concerns with the Agency's traditional approach to determining whether concentration occurs. EPA concluded that modifications can be made to its policy to ensure better predictions of concentration. Although information from processing studies will remain the most important information in determining whether concentration occurs EPA will now also take into account information concerning mixing and blending of crops information pertaining to average residues.

As a result of this change in policy the Agency has reevaluated the processing data for tomato and has concluded that a food additive tolerance is not needed for cyromazine residues including the metabolite melamine in processed tomato products. Tolerances are needed to prevent processed foods from being deemed adulterated when the processed food when ready to eat contains a pesticide residue at a level greater than permitted by the corresponding section 408 tolerance 21 U.S.C. 342(a)(2). In 1993, EPA had concluded that a 409 tolerance for processed tomato products was needed due to a processing study

that showed levels of cyromazine in tomato paste (the tomato byproduct with the highest concentration) 2.2 times the level in tomato (i.e., a concentration factor 2.2X). However, other processing studies showed that processing tomato paste resulted in a reduction of cyromazine residues or a lower concentration factor than 2.2X. In accordance with the Agency's revised concentration policy when the results from all processing studies for tomato paste were averaged, the concentration factor was lowered to 1X. Given the variability in analytical methods and this lower concentration factor, EPA believes that it is unlikely that any tomato paste or other processed tomato products derived from tomatoes containing legal levels of cyromazine could be reliably determined to have levels of cyromazine above the tomato tolerance. Because it is unlikely that processed tomato products will have levels of cyromazine above the section 408 tolerance, no section 409 tolerance is needed. In a letter dated November 21, 1995 Ciba requested withdrawal of the food additive proposal in processed tomato products.

In the same November 21, 1995 letter Ciba also requested withdrawal of the feed additive proposal in or on tomato pomaces; withdrawal of tolerance for cyromazine and melamine in milk, meat, fat and meat byproducts of cattle, goats, hogs, horses and sheep; withdrawal of the tolerance for the metabolite, 1-methycyromazine in the liver and kidney of cattle, goats, hogs, horses and sheep and withdrawal of the request to remove the restriction ''from chicken layer and breeder hens only''. Ciba's withdrawal of these tolerances were submitted in response to EPA's latest revision (unpublished) to Table II (September 1995) of the Pesticide Assessment Guidelines, Subdivision O (Residue Chemistry) titled Raw Agricultural and Processed Commodities and Livestock Feeds Derived from Field Crops and Ciba's voluntary withdrawal of a companion proposed tolerance request for use of cyromazine and its metabolite melamine in or on carrot (PP 6F3329)(See 60 FR 54689, October 25, 1995). With respect to the feed additive proposal for tomato pomace EPA has concluded that tomato pomaces (wet and dry) are no longer considered feedstuffs. Withdrawal of the proposed use of cyromazine on carrot eliminated potential residues from the feedstuff carrot culls. Thus based upon the decision that tomato pomaces are no longer feedstuffs and withdrawal of the carrot tolerance (carrot culls), feed additive tolerances in animal commodities are not necessary for this proposed use.

An adequate analytical method, AG-584A, is available for enforcement purposes.

There are presently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purpose for which the tolerance is sought.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP 6F3333 and FAP2H5640/R2234] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–

354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 18, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.414 the table in paragraph (e) is amended by adding alphabetically the following raw agricultural commodity:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Tomato	1.0

[FR Doc. 96–10922 Filed 5–2–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2F4111/R2226; FRL–5360–3]

RIN 2070–AB78

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a time-limited tolerance for the combined residues of the fungicide iprodione in or on the raw agricultural commodity cottonseed. The regulation to establish a maximum permissible level for residues of iprodione was requested in a petition submitted by Rhone-Poulenc Ag Company.

EFFECTIVE DATE: This regulation becomes effective March 18, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4111/R2226], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 2F4111/R2226]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc Ag Co., P.O. Box 12014,2 T.W. Alexander Drive, Research Triangle Park, NC 27709, has submittedpesticide petition (PP) 2F4111 to EPA requesting that the Administrator,pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act(FFDCA), 21 U.S.C. 346a(d), establish a tolerance for the combined residues of the fungicide iprodione, [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], in or on the raw agricultural commodity cottonseed at 0.10 parts per million (ppm).

Through an oversight, an announcement of receipt of this petition by the Agency was not published in the Federal Register as required by regulation in 40 CFR 177.88. In lieu of the 30-day comment period prior to establishing the tolerance requested, this tolerance is being established with the provision that any comments received within 30 days after publication in the Federal Register which contain objections will be reviewed and if the objections are substantial, the tolerance will be withdrawn, if justified. The publication of this notice is deemed to be in the public interest and is justified by the fact that the resulting changes in the use pattern for iprodione, which resulted from an agreement between Rhone-Poulenc Ag Co. and the Agency, will significantly lower the overall use of iprodione and consequently reduce the risk to the public posed by its current uses.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A three-generation rat reproduction study using dosage levels of 0, 250, 500 and 2,000 ppm with a no-observed-effect level (NOEL) of 500 ppm (25 milligrams/kilogram(mg/kg) body weight (bwt)/day), a reproductive lowest effect level (LEL) of 2,000 ppm (100 mg/kg/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg/day).

2. A rabbit developmental toxicity study in which the following doses were administered by gavage; 0, 20, 60, and 200 mg/kg bwt, resulting in a developmental toxicity NOEL equal to or greater than 60 mg/kg bwt, and an LEL of 200 mg/kg bwt.

3. A rat developmental toxicity study in which the following doses were administered by gavage: 0, 40, 90, and

200 mg/kg bwt, with a developmental toxicity NOEL equal to or greater than 90 mg/kg bwt, and an LEL of 200 mg/kg bwt.

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250 and 1,000 ppm (6.25, 12.5 and 50 mg/kg/day) which showed no treatment-related tumors were reported but testicular intersticial cell tumors were observed.

5. A repeated 24-month rat feeding study at dose levels of 0, 150, 300 and 1,600 ppm which showed non-neoplastic changes such as intersticial cell hyperplasia in the testes of males and tubular hyperplasia in the ovaries and increased sciatic nerve fiber degeneration in females. The NOEL for non-neoplastic changes was 150 ppm (6.1 mg/kg/day for males and 8.4 mg/kg/day for females) and an LEL of 300 ppm (12.4 mg/kg/day for males and 16.5 mg/kg/day for females).

6. An 18-month oncogenicity study in mice using dosage levels of 200, 500 and 1,250 ppm (28.6, 71.4 and 178.6 mg/kg/day, which showed no carcinogenicity.

7. A repeated mouse feeding study of 99 weeks at dose levels of 0, 160, 800, and 4,000 ppm in which there was a significantly increased incidence of single and multiple areas of enlarged eosinophilic hepatocytes and focal fat-containing hepatocytes in both males and females. In males there was an increased incidence of generalized vacuolation/hypertrophy of the interstitial cells of the testes in the mid- and high-dose mice. There was a dose-related increase in female mice displaying luteinization of the interstitial cell of the ovary, but statistical significance was not attained at any dose level. The NOEL for non-neoplastic changes was 160 ppm (23 mg/kg/day for males and 27 mg/kg/day for females) and the LEL was 800 ppm (115 mg/kg/day for males and 138 mg/kg/day for females).

8. A 1-year dog feeding study using dosage levels of 100, 600 and 3,600 ppm (4.2, 15, and 90 mg/kg/day) with a NOEL of 100 ppm (4.2 mg/kg/day) and an LEL of 600 ppm (15 mg/kg/day) based on decreased prostate weight and an increased number of erythrocytes with Heinz bodies in males.

9. Another 1-year dog feeding study at dosage levels of 200, 300, 400 and 600 ppm in which the NOEL was set at 400 ppm (17.5 mg/kg for males and 18.4 mg/kg for females and an LEL set at 600 ppm (24.6 mg/kg for males and 26.4 mg/kg for females) based on depressed red blood cell parameters.

10. A 90-day feeding study in dogs using dosage levels of 800, 2,400 and 7,200 ppm (20, 60, and 180 mg/kg/day) with a NOEL of 2,400 ppm (60 mg/kg/day) and an LEL of 7,200 ppm (180 mg/kg/day) based on liver hypertrophy and increased SAP.

11. Iprodione was tested in several mutagenicity studies. The chemical was negative in the Ames assay; CHO/HGPRT mammalian cell forward mutation assay, with and without metabolic activation; *in vitro* chromosome aberration assay in CHO cells; *in vitro* sister chromatid exchange assay in CHO cells; and dominant lethal test in mice. Iprodione was positive in the *Bacillus subtilis* assay for DNA damage without metabolic activation.

The Reference Dose (RfD) of 0.06 mg/kg/day based on a NOEL of 6.1 mg/kg/day and an uncertainty factor of 100 was used in the chronic risk analysis for iprodione. Using percent crop treated data and the Anticipated Residue Contribution (ARC), the Theoretical Maximum Residue Contribution (TMRC) for the overall U.S. population is 0.015134 mg/kg/day and utilizes 25% of the RfD. For the most highly exposed subgroup, non-nursing infants, the TMRC is 0.045389 mg/kg/day and utilizes 76% of the RfD. The calculated percentage of the RfD is within a safe margin and the chronic dietary risk posed from iprodione is not of concern.

In analyzing for the acute dietary risk tolerance level, residues were used to calculate the exposure of the highest exposed individual for the females (13 years old or older) which was compared to the developmental NOEL of 60 mg/kg/day from the rabbit study to determine the Margin of Exposure (MOE). The MOE was calculated to be 333. The Agency is not generally concerned with acute risk unless the MOE is below 100 when the NOEL is taken from an animal study.

The Health Effects Division (HED) Cancer Peer Review Committee determined that iprodione should be classified as a group B2 carcinogen (probable human carcinogen). Calculations of $Q1^*$ from the rat study used in the risk analysis was based upon interstitial cell benign tumor rates and was calculated to be 0.0439 $(mg/kg/day)^{-1}$. In the dietary cancer risk assessment, the upper bound cancer risk was calculated for all registered commodities when using anticipated residues to be 6.0×10^{-6}. This upper bound cancer risk estimate exceeds the Agency's generally accepted level of concern for dietary risk, even when anticipated residues are used and adjustments for percent crop treated are made. In an agreement between the Agency and Rhone-Poulenc Ag Co., various changes in the use pattern of iprodione will be made to reduce the residues of iprodione in or on several crops. Although data are not available to quantitatively determine the amount of reduction, the overall quantity of iprodione used will be reduced enough to significantly affect the amount of residues. This reduction is expected to lower the upper bound cancer risk estimate to an acceptable level.

The upper bound cancer risk attributed to the use of iprodione on cotton was calculated to be 1.8×10^{-8}. Therefore, the added use would be unlikely to significantly affect the overall cancer risk estimate. The tolerance being established for cottonseed is time-limited and the time limitation is being imposed on the condition that sufficient data are submitted within the time period to demonstrate that the risk has been reduced to an acceptable level through the changes in the use pattern of iprodione containing products.

An adequate analytical method, gas liquid chromatography using an electron-capture detector, is available in the *Pesticide Analytical Manual*, Vol. II, for enforcement purposes.

There are presently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purpose for which the tolerance is sought.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the

material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 2F4111/R2226] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 18, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.399, is amended by adding paragraph (d) to read as follows:

§ 180.399 Iprodione; tolerances for residues.

* * * * *

(d)(1) A time-limited tolerance, to expire March 15, 1997, is established permitting the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the following raw agricultural commodity:

Commodity	Parts per million
Cottonseed	0.10

(2) Residues in this commodity not in excess of the established tolerance resulting from the use described in this paragraph remaining after expiration of the time-limited tolerance will not be considered to be actionable if the fungicide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 96–10921 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300403A; FRL–4995–8]

RIN 2070–AB78

Tebuthiuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final regulation establishes lower tolerances for residues of Tebuthiuron on grass hay and grass rangeland forage and changes the commodity name grass, rangeland forage to grass, forage. These changes are based on the Reregistration Eligibility Decision tolerance assessment for Tebuthiuron.

EFFECTIVE DATE: This regulation becomes effective July 2, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300403A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2,

1921 Jefferson Davis Hwy., Arlington, VA 22202.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electron form must be identified by the docket number [300403A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Ben Chambliss, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station #1, Third Floor, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-8174, e-mail: chambliss.ben@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 6, 1995 (60 FR 62364), EPA issued a proposed rule that proposed to lower the tolerance for Tebuthiuron on grass hay and grass rangeland forage and to change the commodity name ''grass, rangeland forage'' to ''grass, forage.''

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. This final rule adopts those changes based on the Reregistration Eligibility Decision tolerance assessment for Tebuthiuron.

This regulation amends 40 CFR 180.390 by lowering the tolerance for grass hay and forage from 20 parts per million (ppm) to 10 ppm, based on data showing that combined residues of tebuthiuron and its regulated metabolites did not exceed 10 ppm on any grass forage or hay sample in field trials conducted under label conditions.

This regulations also amends the definition listed in 40 CFR 180.390 to conform to commodity definitions currently used by EPA.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP–300403A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines ''a significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

There are no information collection requirements in this regulation therefore the requirements of the Paperwork Reduction Act do not apply to this rulemaking.

List of Subjects In 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 16, 1996.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR, chapter I, part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.390 the table is amended by revising the entry for ''grass, hay'', removing the entry for ''grass, rangeland, forage'', and adding alphabetically an entry for ''grass, forage'', to read as follows:

§ 180.390 Tebuthiuron; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Grass, forage	10.0
Grass, hay	10.0
* * * * *	

[FR Doc. 96–10920 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 9F3798/R2229; FRL–5362–9]

RIN 2070–AB78

Lactofen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends a time-limited tolerance for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million (ppm). The Valent USA Corp. requested this tolerance pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA). The time-limited tolerance expires on December 31, 1996.

EFFECTIVE DATE: This regulation is effective May 3, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [[PP 9F3798/R2229], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [[PP 9F3798/R2229]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 14, 1996 (61 FR 5726) (FRL–5349–1), EPA issued a proposed rule that gave notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), the Agency proposed to extend until December 31, 1996, a tolerance for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity (RAC) cottonseed at 0.05 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 9F3798/R2229] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk

may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this executive order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 10, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.432, paragraph (b) is revised to read as follows:

§180.432 Lactofen; tolerances for residues.

* * * * *

(b) A time-limited tolerance, that expired December 31, 1995, is renewed for 1 year and will now expire December 31, 1996, for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration date
Cottonseed	0.05	December 31, 1996

[FR Doc. 96–10919 Filed 5–2–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–30109; FRL–5365–2]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 2.54 percent increase in locality pay for civilian Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan area in 1996.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Concerning this rule: By mail: Rochele Kadish, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 700-K, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., 703–305–5044, e-mail: kadish.rochele@epamail.epa.gov.

Concerning Tolerance Petitions and Individual Fees: Tom Ellwanger, 703–308–8780, e-mail: ellwanger.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible.

The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the Federal Register on May 17, 1995 (60 FR 26360)(FRL–4950–7) and became effective on June 16, 1995. At that time the fees were increased 3.22 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale... When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the Federal Register as a final rule to become effective thirty days or more after publication, as specified in the rule.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as ''locality pay''. The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis

of a comparison with non-Federal rates on a geographic, locality basis.

The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/Baltimore, MD pay area. The pay raise in 1996 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 2.54 percent; therefore, the tolerance petition fees are being increased 2.54 percent. The entire fee schedule, § 180.33, is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: April 16, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $61,950, plus $1,550 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $14,175 plus $950 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $11,425.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $24,750 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,500.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $12,350 plus $950 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $7,750. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,550 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,550 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $3,100.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $30,950 to cover the costs of the advisory committee. Further advance deposits of $30,950 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), Washington, DC 20460. A fee of $1,550 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled ''Tolerance Petition Fees'' and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived

or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the Federal Register as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 96–10918 Filed 5–2–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4F4406/R2222; FRL–5358–5]

RIN 2070–AB78

Tefluthrin; Renewal of Time-limited Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the pyrethroid tefluthrin and its metabolites in or on the raw agricultural commodity (RAC) corn, fresh (including sweet K + CWHR) at 0.06 parts per million (ppm), and corn, forage and fodder, sweet at 0.06 ppm and renews time-limited tolerances for tefluthrin on the RAC's corn, grain, field, and pop; corn forage and fodder, field and pop. These regulations to establish maximum permissible levels for residues of the chemical and renew tolerances were requested in a petition submitted by Zeneca Ag Products.

EFFECTIVE DATE: This regulation becomes effective May 3, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4406/R2222], may be submitted to: Hearing Clerk (A–1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 4F4406/R2222] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of February 8, 1995 (60 FR 7540)(FRL-4926-4), which announced that Zeneca Ag Products had submitted pesticide petition (PP) 4F4406 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for the combined residues of the insecticide tefluthrin (2,3,5,6-tetrafluro-4-methylphenyl)methyl-(1 *alpha*, 3 *alpha*)-(*Z*)-(±)-3(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluroro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid, in or on the raw agricultural commodity corn, fresh (including sweet K + CWHR) at 0.06 ppm, and corn, forage and fodder, sweet at 0.06 parts per million (ppm).

No comments were received in response to the notice of filing.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological and metabolism data considered in support of the tolerance are discussed in detail in related documents published in the Federal Register of February 1, 1989 (54 FR 5080).

A dietary exposure/risk assessment was performed for teflutrhin on sweet corn using a Reference Dose (RfD) of 0.005 mg/kg/day, based on a no-observed-effect-level (NOEL) of 0.5 mg/kg bwt/day from a 1– year dog feeding study with an uncertainty factor of 100. The endpoint of concern was increased incidence of ataxia. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes 0.41% of the RfD for the U. S. population or 0.69% of the RfD if the new tolerance is granted. Established tolerances utilize 1.06% of the RfD for nonnursing infants less than 1 year old, the subgroup with the highest estimated exposure to tefluthrin residues or 1.71% of the RfD if the new tolerance is granted.

Generally speaking, EPA has no cause for concern if total residue contribution for published and final tolerances is less than the RfD.

The nature of tefluthrin residue in plants and animals for this corn use is adequately understood. The residues of concern is tefluthrin and its metabolite. There is no reasonable expectation of secondary residues in animal tissues and milk from the use as delineated in 40 CFR 180.6(a)(3). An adequate analytical method, gas liquid chromatography with an electron capture detector, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration, and is published in the *Pesticide Analytical Manual* Vol. II (PAM II).

In the Federal Register of September 30, 1994 (59 FR 49824) EPA amended 40 CFR 180.440 by extending to November 15, 1995 tolerances of 0.06 ppm for residues of tefluthrin in or on field and pop, corn grain including, forage and fodder. The tolerances were extedned to coincide with the extension of the conditional registration of this pesticide to allow time for EPA to review data and complete an aquatic risk assessment for use on field and pop corn. The basis for the extension is discussed in detail in the above Federal Register notice. On November 14, 1995 EPA again amended the conditional

registration of this pesticide on field and pop corn by extending the expiration date to November 15, 1996. The registration was amended and extended for an additional year to allow time for submission and evaluation of additional data/information on aquatic risk mitigation, specifically, surface-water runoff data. Zeneca Ag Products submitted this information on December 1, 1995.

To be consistent with the extension issued for the conditional registration the Agency is renewing the tolerances on field and pop corn grains, including their forage and fodder, with an expiration date of November 15, 1997 to cover residues expected to result from use during the period of conditional registration.

With respect to the additional use of tefluthrin on sweet corn, the Agency concluded that this additional use would not cause a significant increase in the risk of adverse effects to the environment. This conclusion was premised mainly on the following:

1. The directions for use and precautions for use of tefluthrin on sweet corn are identical to the current directions for use for tefluthrin on field and pop corn.

2. Current, interim aquatic risk mitigation measures approved for use on field and pop corn will also be used for application on sweet corn.

To be consistent with the conditional registration and renewal on field and pop corn the Agency is issuing a conditional registration with an expiration date of November 15, 1996 and establishing a time-limited tolerance on sweet corn and its forage and fodder with an expiration date of November 15, 1997 to cover residues expected to result from use during the period of conditioanl registration.

Upon evaluation of the additional data/information required as a condition of the registration for this insecticide on corn the Agency will reassess the tolerances and the registration, and if appropriate, will issue permanent tolerances and an unconditional registration for the insecticide on corn.

Residues remaining in or on the above commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the conditional registration.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP 4F4406/R2222] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 9–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovenmental Partnership, or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 4, 1996.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising 180.440, and the table therein to read as follows:

§ 180.440 Tefluthrin; tolerances for residues.

Tolerances, to expire on November 15, 1997, are established for the combined residues of the insecticide tefluthrin (2,3,5,6-tetrafluro-4-methylphenyl)methyl-(1-*alpha*, 3-*alpha*)-(*Z*)-(±)-3(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolite (*Z*)3-3-(2-chloro-3,3,3-trifluro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid raw agricultural commodities:

Commodity	Parts per million
Corn, grain, field and pop	0.06
Corn, forage and fodder, field, pop and sweet	0.06
Corn, fresh (including sweet K and CWHR)	0.06

[FR Doc. 96–10917 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300410A; FRL–5359–5]

Xanthan Gum-Modified, Produced by the Reaction of Xanthan Gum and Glyoxal; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document exempts xanthan gum-modified, produced by the reaction of xanthan gum and glyoxal (maximum 0.3% by weight) from the requirement of a tolerance when used as a surfactant in pesticide formulations. This regulation was requested by Rhone-Poulenc, Inc., pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulations becomes effective on May 3, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300410A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300410A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, North Tower, Arlington, VA, (703)–308–8375, e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 7, 1996 (61 FR 4621) (FRL–4994–4), EPA issued a pesticide petition (PP) 2E04084 from Rhone-Poulenc, Inc., CN 7500, Cranbury, NJ 08512–7500, requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for xanthan gum, modified, produced by the reaction of xanthan gum and glyoxal (maximum 0.3% by weight) when used as a surfactant in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

There were no comments received in response to the proposed rule.

Based upon a review of the data submitted and a review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA is exempting xanthan gum-modified, produced by the reaction of xanthum gum and glyoxal (maximum 0.3% by weight) from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [OPP–300410A] (including any comments and data submitted electronically). A public

version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1996.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001, paragraph (c), the table is amended by adding alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(c) * * *

Ingredients	Limits	Uses
* *	* * *	* *
Xanthan gum-modified, produced by the reaction of xanthan gum and glyoxal (maximum 0.3% by weight).	Not more than 0.5% of pesticide formulation.	Surfactant
* *	* * *	* *

[FR Doc. 96–10916 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4600/5H5733/R2233; FRL–5364–5]

RIN 2070–AB18

Imidacloprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites in or on pome fruits. Bayer Corporation (formerly Miles, Inc.) requested this regulation to establish these maximum permissible levels for residues of the insecticide.

EFFECTIVE DATES: This regulation became effective April 19, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [PP 5F4600/5H5733/R2233], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of November 15, 1995 (60 FR 57423), which announced that Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition 5F4600/5H5733 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine in or on pome fruit (fresh fruit) including apple, pear, crabapple, loquat, mayhaw, pear

(oriental) and quince, at 0.6 ppm and a Food Additive Tolerance (FAT) 5H5733 in or on apples, pomace (wet or dried) at 4.0 ppm. There were no comments or request for referral to an advisory committee received in response to this notice of filing. Subsequent to the notice of filing Bayer submitted a revised Section F deleting the 4 ppm apple pomace tolerance that was proposed in the pome fruit petition. The reason apple pomace was deleted is because dried apple pomace is no longer considered a significant livestock feedstuff in the Agency's September 1995 revised Table II and there is no significant concentration from apples to wet apple pomace.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt); rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog feeding study with a NOEL of 1,250 ppm (41 mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee.

The reference dose (RfD) based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainity factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008187 mg/kg/bwt/day utilizing 14.4% of the RfD. The tolerance will increase the TMRC by .000154 mg/kg/day representing an increase in the ADI of 0.3%. Thus the TMRC will be .008340 mg/kg/day utilizing 14.6% of the RfD. For exposure of the most highly exposured subgroups in the population, children (ages 1-6), the TMRC for the tolerances is 0.016570 mg/kg/day. This is equal to 29.1% of the RfD. Dietary exposure from the existing uses and proposed use will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. Imidacloprid and its metabolites are stable in the commodities when frozen for at least 24 months. There are adequate amounts of geographically representative crop field trial data to show that combined residues of imidacloprid and its metabolites, all calculated as imidacloprid, will not exceed the proposed tolerance when used as directed.

There are presently no actions pending against the continued registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerance is sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, these tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.472(a) is amended in the table therein by adding in alphabetical order the following commodity to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pome fruits crop group	0.6
* * * * *	

* * * * *

[FR Doc. 96–10915 Filed 5–02–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7640]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Acting Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action underthe criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania:				
German, township of, Fayette County	421627	March 1, 1977, Emerg.; April 16, 1991, Reg.; May 6, 1996, Susp.	May 6, 1996	May 6, 1996.
Region IV				
Georgia:				
Jasper County, unincorporated areas	130519	January 24, 1995, Emerg.; May 6, 1996, Reg.; May 6, 1996, Susp.	.....do	Do.
Telfair County, unincorporated areas ...	130166	November 9, 1994, Emerg.; May 6, 1996, Reg.; May 6, 1996, Susp.	.....do	Do.
North Carolina: Asheville, city of, Buncombe County.	370032	June 30, 1976, Emerg.; July 16, 1980, Reg.; May 6, 1996, Susp.	.....do	Do.
Region V				
Indiana: Warrick County, unincorporated areas.	180418	April 11, 1975, Emerg.; May 17, 1982, Reg.; May 6, 1996, Susp.	.....do	Do.
Michigan:				
Allen Park, city of, Wayne County	260217	March 23, 1973, Emerg.; February 17, 1982, Reg.; May 6, 1996, Susp.	.....do	Do.
Dearborn, city of, Wayne County	260220	March 9, 1973, Emerg.; April 20, 1979, Reg.; May 6, 1996, Susp.	.....do	Do.
Dearborn Heights, city of, Wayne County.	260221	January 12, 1973, Emerg.; May 2, 1983, Reg.; May 6, 1996, Susp.	.....do	Do.
Selma, township of, Wexford County ...	260757	April 7, 1986, Emerg.; September 30, 1988, Reg.; May 6, 1996, Susp.	.....do	Do.
Taylor, city of, Wayne County	260728	November 25, 1986, Emerg.; November 25, 1986, Reg.; May 6, 1996, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Pauls Valley, city of, Garvin County	400246	December 9, 1976, Emerg.; September 17, 1980, Reg.; May 6, 1996, Susp.	.....do	Do.
Stillwater, city of, Payne County	405380	April 30, 1971, Emerg.; June 22, 1973, Reg.; May 6, 1996, Susp.	.....do	Do.
Region VII				
Colorado: Lafayette, city of, Boulder County.	080026	August 7, 1975, Emerg.; March 18, 1980, Reg.; May 6, 1996, Susp.	.....do	Do.
Region I				
Maine: Lyman, town of, York County	230195	July 23, 1975, Emerg.; May 15, 1991, Reg.; May 20, 1996 Susp.	May 20, 1996	May 20, 1996.
Region X				
Washington: King County, unincorporated areas.	530071	October 13, 1972, Emerg.; September 29, 1978, Reg.; May 20, 1996, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: April 25, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–11040 Filed 5–2–96; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

CGD 94–041]

RIN 2115–92

Radar-Observer Endorsement for Operators of Uninspected Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period on interim rule.

SUMMARY: The Coast Guard is reopening the period for public comment on its interim rule requiring a radar-observer endorsement for operators of uninspected towing vessels. It would like public help in clarifying certain issues.

DATES: Comments must be received on or before July 2, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 94–041], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–09001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Don Darcy, Project Manager, Marine Safety and Environmental Protection, Office of Maritime Personnel Qualifications (G–MOS–1) (202) 267–0221.

SUPPLEMENTARY INFORMATION: On October 26, 1994, the Coast Guard published an interim rule requiring a radar-observer endorsement, with appropriate training, for licensed masters, mates, and operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length [59 FR 53754]. This rule requires every licensed person to hold either an endorsement as a radar-observer or, if he or she holds a valid license issued before February 15, 1995, a certificate from a radar-operation course. In response to comments from members of the regulated public, the Coast Guard published an amendment to the interim rule on February 14, 1995 [60 FR 8308], which changed the date by which the radar-observer endorsement or the radar-operation course certificate would be required: from February 15, 1995, to June 1, 1995. The effective date of the interim rule remained and remains June 1, 1995.

Further evaluation of the interim rule by the Coast Guard revealed certain issues that require clarification. Therefore, the Coast Guard has decided to reopen the comment period.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. There is no need to refile comments already submitted. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 94–041] and the specific section of the interim rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change the interim rule in view of the comments.

Although the Coast Guard invites comments on any feature of the interim rule, it specifically invites comments on the following:

Section 10.305(c)(2)(iii)(C). Should the Coast Guard require the determination of the course and speed of another vessel for inland routes?

Section 10.305(c)(2)(iii)(D). Should the Coast Guard require the determination of the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel for inland routes? On most inland routes, towing vessels have a one-person watch in the wheelhouse and may compromise the safety of the tow if they were required to do this.

Section 10.480(f). Currently an endorsement as radar observer issued under this section is valid for five years after the month of issuance of the certificate of training from a course approved by the Coast Guard. Should there be a 2 year window of acceptability to the renewal date of the license to bring the two dates together and eliminate an expensive license transaction? This would make the normal validity of the endorsement 5 years, but not to exceed 7 years.

Dated: April 25, 1996.

Joseph J. Angelo,

Director for Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–10999 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board

49 CFR Parts 1051, 1053 and 1312

[Ex Parte No. MC–180 (Sub-No. 3)]

Regulations Implementing Section 7 of the Negotiated Rates Act of 1993

AGENCY: Surface Transportation Board (Board).[1]

ACTION: Final Rule; Termination of Proceeding.

SUMMARY: The Board is rescinding the rules previously issued by the Interstate Commerce Commission (ICC) in this proceeding concerning the off-bill discounting provisions of section 7 of the Negotiated Rates Act of 1993 (NRA), and terminating the proceeding. The ICC Termination Act of 1995 repealed and did not reenact the requirement that the ICC, or any agency, issue or maintain regulations to carry out the remaining requirements of section 7.

EFFECTIVE DATE: The action is effective on May 3, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Martin, (202) 927–6033 [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: In accord with section 7 of the NRA, Public Law No. 103–180, the ICC adopted regulations relating to off-bill discounting. *Regs. Implementing § 7 of the Negotiated Rates Act 1993,* 9 I.C.C.2d 1263 (1993). The rules, which were published at 59 FR 2303 (Jan. 14, 1994), prohibited, except as to certain services, motor common and contract carriers of property from providing ''off-bill discounting.'' Off-bill discounting is a practice by which a carrier provides a reduction in a tariff rate or contract rate

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions and proceedings to the Board.

to a person who does not pay the freight charges for the services involved.

Section 7 also contained other requirements beyond prohibiting off-bill discounting. To implement these provisions, the regulations also (1) made it unlawful to provide misleading or false billing information to a carrier; and (2) required that freight bills disclose the rates and reductions or allowances involved. 49 CFR 1051.

The ICC issued a further order, 59 FR 14570, March 19, 1994, (served March 23, 1994) responding to inquiries it had received concerning the rules. In that order, the ICC invited additional questions and comments from interested parties, and it indicated that a further decision would be forthcoming. A number of comments have been filed.

Although it retained (with modifications) the other requirements of section 7, the ICCTA repealed and did not reenact the former statutory prohibition against off-bill discounting. *See* 49 U.S.C. 13708. Moreover, the ICCTA repealed and did not reenact the requirement that the ICC, or any agency, issue or maintain regulations to carry out the remaining requirements of section 7. *Id*. Therefore, the regulations, including the prohibition against off-bill discounting, are rescinded.[2]

Consequently, further consideration of the comments is unnecessary, and this proceeding is terminated.[3]

List of Subjects

49 CFR Part 1051

Buses, Freight, Motor Carriers, Reporting and recordkeeping requirements.

49 CFR Part 1053

Motor contract carriers.

49 CFR Part 1312

Household goods freight forwarders, Motor carriers, Moving of household goods, Pipelines, Tariffs, Water carriers.

Authority: 49 U.S.C. 721(a); Sections 204(a) and 204(b)(3) of the ICC Termination Act.

Decided: April 17, 1996,

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

PART 1051—RECEIPTS AND BILLS

1. The authority citation for part 1051 is revised to read as follows:

Authority: 5 U.S.C. 553, 49 U.S.C. 721(a), 13710, 14122.

§ 1051.2 [Amended]

2. In § 1051.2, the introductory text of paragraph (a)(1) is redesignated as the introductory text of paragraph (a) and paragraphs (a)(1)(i) through (a)(1)(xi) are redesignated as paragraphs (a)(1) through (a)(11), and paragraphs (a)(2) and (a)(3) are removed.

PART 1053—[REMOVED]

3. Part 1053 is removed.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS OF MOTOR, PIPELINE AND WATER CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

4. The authority citation for Part 1312 is revised to read as follows:

Authority: 5 U.S.C. 553, 49 U.S.C. 721(a), 13702.

§ 1312.14 [Amended]

5. In § 1312.14(a), paragraph (a)(4) is removed.

[FR Doc. 96–11087 Filed 5–2–96; 8:45 am]

BILLING CODE 4915–00–P

[2] Section 204(a) of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the Interstate Commerce Commission that are based on provisions of law repealed and not substantively reenacted by this Act.''

[3] Section 204(b)(3) of the ICCTA provides that, ''in the case of a proceeding under a provision of law repeal[ed], and not reenacted, by this Act such proceeding shall be terminated.''

Proposed Rules

Federal Register
Vol. 61, No. 87
Friday, May 3, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011 and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	Docket No.
1005	Carolina	AO–388–A9
1007	Southeast	AO–366–A38
1011	Tennessee Valley	AO–251–A40
1046	Louisville-Lexington-Evansville.	AO–123–A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held in response to industry requests to amend four Southeastern Federal milk marketing orders. One proposal would provide transportation credits for bulk milk that is imported into these markets for fluid use. Mid-America Dairymen, Inc., the proponent of the proposed amendments, has requested that this issue be handled on an emergency basis. A second proposal by Milkco, Inc., and Hunter Farms, Inc., would specify, in each of the four orders, those costs which are the responsibility of the plant operator and that may not, accordingly, be passed on to producers in any manner.

DATES: The hearing will convene at 9:00 a.m. on May 15, 1996.

ADDRESSES: The hearing will be held at the Sheraton Airport Plaza Hotel, 3315 South I–85 at Bill Graham Parkway, Charlotte, North Carolina, 28208. (Telephone: 704/392–1200).

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sheraton Airport Plaza Hotel, 3315 South I–85 at Bill Graham Parkway, Charlotte, North Carolina, 28208 beginning at 9:00 a.m., on May 15, 1996, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Carolina and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to proposal number one. Since this proposal will be handled on an emergency basis, it is necessary to provide interested parties with less than 15 days notice of the public hearing to ensure that the proposed amendments, if found to be appropriate, will be effective by July 1, 1996.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with four copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

The authority citation for 7 CFR Parts 1005, 1007, 1011, and 1046 continues to read as follows:

PARTS 1005, 1007, 1011, 1046—[AMENDED]

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Mid-America Dairymen, Inc.

Proposal No. 1: Amend 7 CFR Parts 1005, 1007, 1011, and 1046 as follows:

a. Amend § 10XX.61 of each order by redesignating paragraph (a)(4) as paragraph (a)(5), paragraph (a)(5) as paragraph (a)(6), paragraph (b)(5) as paragraph (b)(6), paragraph (b)(6) as paragraph (b)(7), and adding new paragraphs (a)(4) and (b)(5) to read as follows:

* * * * *

(a) * * *

(4) Deduct the amount by which the amount due to be paid from the Hauling Credit Balancing Fund pursuant to § 10XX.82 exceeds the available balance in the Hauling Credit Balancing Fund pursuant to § 10XX.80.

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due to be paid from the Hauling Credit Balancing Fund pursuant to § 10XX.82 exceeds the available balance in the Hauling Credit Balancing Fund pursuant to § 10XX.80.

* * * * *

b. Add new §§ 10XX.80, 10XX.81, and 10XX.82 to each order to read as follows:

§ 10XX.80 Hauling credit balancing fund.

The market administrator shall maintain a separate fund known as the Hauling Credit Balancing Fund into which he shall deposit the payments made pursuant to the hauling credit balancing adjustment specified in § 10XX.82; Provided, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 10XX.81 Payments to the hauling credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the value, if any, of the hauling credit balancing adjustment determined by multiplying the pounds of Class I milk assigned pursuant to § 10XX.44 by $0.03 per hundredweight hauling credit balancing adjustment; Provided, That for any of the months of July through December in which the balance in the Hauling Credit Balancing Fund for the second preceding month is less than the total value of the hauling credit balancing adjustments applicable for the previous six months, then the hauling credit balancing adjustment shall be $0.06 per hundredweight; Provided Further, That for any of the months of January through June the hauling credit balancing adjustment shall be zero for any month in which the balance in the Hauling Credit Balancing Fund for the second preceding month is greater than the total value of the hauling credit balancing adjustments applicable during the previous six months.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the Hauling Credit Balancing Fund, from the Producer Settlement Fund, any amount deducted pursuant to § 10XX.61 (a)(4) or (b)(5).

§ 10XX.82 Payments from the hauling credit balancing fund.

On or before the 13th day after the end of each of the months of July through December, and any other month in which the classification of producer milk allocated to Class I pursuant to § 10XX.44 exceeds 80 percent, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.9 cents per hundredweight for each 10 miles or fraction thereof less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant. Provided, That payments may be assigned to any cooperative association which provides written notice to the market administrator prior to the date payment is due.

Proposed by Milkco, Inc., and Hunter Farms, Inc.

Proposal No. 2: Amend § 10XX.73 of 7 CFR Parts 1005, 1007, 1011, and 1046 by adding a new paragraph (e) to read as follows:

§ 10XX.73 Payments to producers and to cooperative associations.

* * * * *

(e) A handler may not reduce its obligations hereunder to producers or cooperatives by permitting producers or cooperatives to provide ''services which are the responsibility of the handler. The services which are the responsibilities of the handler are:

(1) Preparation of producer payroll;

(2) Conduct of screening tests of tanker loads of milk required by duly constituted regulatory authorities before milk may be transferred to the plant's holding tanks and any other tanker load tests required to establish the quantity and quality of milk received; and

(3) Any services for processing of raw milk or marketing of packaged milk by the handler.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 3: Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders regulating the aforesaid marketing areas may be inspected at or procured from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or from the following market administrators: Sue L. Mosley, Market Administrator, P.O. Box 1208, Norcross, GA 30091–1208 (Tel: 770/448–1194); or Arnold M. Stallings, Market Administrator, P.O. Box 18030, Louisville, KY 40261–0030 (Tel: 502–499–0040).

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;

Office of the Administrator, Agricultural Marketing Service;

Office of the General Counsel;

Dairy Division, Agricultural Marketing Service (Washington office); and

Offices of the Market Administrators of the orders involved in this proceeding.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: May 1, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–11170 Filed 5–2–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0924]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The proposed rule would amend the Board's Regulation O, which limits how much and on what terms a bank may lend to its own insiders and insiders of its affiliates. Under the proposed rule, four of the five restrictions of Regulation O would not apply to extensions of credit by a bank to executive officers and directors of the bank's affiliates, provided that those executive officers and directors were not engaged in major policymaking functions of the lending bank. Of the restrictions in Regulation O, only the prohibition on preferential lending would apply to extensions of credit to such persons.

The Board was granted authority to create such an exception for directors of affiliates for the first time by the Riegle Community Development and Regulatory Improvement Act of 1994; Regulation O already contains a blanket regulatory exception for executive officers of affiliates not involved in policymaking at the lending bank, which as a result of the statute must be scaled back to no longer include the prohibition on preferential lending.

DATES: Comments must be received on or before June 17, 1996.

ADDRESSES: Comments should refer to Docket No. R–0924 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW., (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), or Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 22(h) of the Federal Reserve Act, 12 U.S.C. 375b, restricts insider lending by banks, and Regulation O implements section 22(h). Regulation O limits total loans to any one insider and aggregate loans to all insiders to a percentage of the bank's capital and requires that such loans be on non-preferential terms—that is, on the same terms a person not affiliated with the bank would receive.[1] 12 CFR 215.4 (a), (c) and (d). For this purpose, an ''insider'' means an executive officer, director, or principal shareholder, and loans to an insider include loans to any ''related interest'' of the insider, including any company controlled by the insider. 12 CFR 215.2(h). Regulation O requires that banks maintain records to document compliance with all these restrictions. 12 CFR 215.8.

Section 22(h) restricts lending not only to insiders of the bank making the loan but also to insiders of the bank's parent bank holding company and any other subsidiary of that bank holding company. As amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA),[2] section 22(h)(8) provides that ''any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.'' 12 U.S.C. 375b(8)(A).

At the time that the FDICIA amendment became effective, the Board's rules did not place any restrictions on loans to an executive officer of a bank's affiliates (other than the parent bank holding company) unless the executive officer was involved in major policymaking functions at the bank.[3] 12 CFR 215.2(d) (1992). The Board considered this treatment appropriate for two reasons. First, such persons generally were not considered to be in a position to exert sufficient leverage on the bank to obtain a loan on anything but arm's lengths terms, in contrast to executive officers of the bank or its parent. Thus, in terms of protecting the safety and soundness of banks, the Board considered the benefits of restricting loans to these affiliate insiders to be small. Second, applying these restrictions to affiliate insiders would have required each bank to maintain an updated list of all its affiliates' executive officers and all related interests of those executive officers, and to check all loans against this list. Particularly for a bank in a large bank holding company structure, this effort would have constituted a significant burden—and one not outweighed by any substantial benefit.

However, after the FDICIA amendment to section 22(h)(8), the language of the statute no longer appeared to allow such an exception for executive officers of affiliates, who are explicitly treated like executive officers of the bank itself. Still, nothing in the legislative history of FDICIA indicated that Congress intended to invalidate the Board's regulatory exception and extend coverage to all executive officers of affiliates.

In the Riegle Community Development and Regulatory Improvement Act of 1994, Congress addressed this issue by amending section 22(h)(8) yet again. Congress allowed the Board to make exceptions to the statutory restrictions on lending to affiliate insiders embodied in paragraph (8). The extension of the statute to affiliate insiders was moved to a new paragraph (8)(A), and authority for the Board to make exceptions was placed in a new paragraph (8)(B), which reads as follows:

> The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank.

Section 22(h)(2)—the ''paragraph (2)'' to which the Board may not make

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[1] Regulation O also requires prior approval of the bank's board of directors for certain loans to insiders and prohibits overdrafts by executive officers and directors.

[2] Pub. L. 102–242, section 306 (1991).

[3] Subsection (h) of section 22 was added in 1978. Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630, section 104. However, the statute was ambiguous about whether an executive officer of a bank's affiliate was required to be treated like an executive officer of the bank itself. (The statute imposed restrictions on lending by banks to ''executive officers'' of the bank. The statute provided that an ''officer'' of a bank included officers of affiliates—but did not so provide with respect to ''executive officers.'') No such ambiguity arose with respect to directors and principal shareholders of affiliates, who were explicitly treated like their banking counterparts. In 1980, the Board amended Regulation O to cover insiders of affiliates, but included a regulatory exception for executive officers of affiliates not involved in major policymaking functions at the bank.

exceptions—is the prohibition against lending on preferential terms.

The 1994 amendment to section 22(h) allows the Board to exempt executive officers and directors of affiliates (other than the bank holding company) from insider lending restrictions, provided they are not involved in major policymaking functions at the lending bank. The legislative history of the provision indicates that it was intended to allow the Board to extend its existing exception for executive officers to directors as well.[4] However, the 1994 amendment clearly does not allow the Board to exempt either executive officers or directors from the restriction on preferential lending in section 22(h)(2).

Thus, the apparent effect of the 1994 amendments regulation is (1) to reaffirm the Board's regulation insofar as it exempts executive officers of affiliates who are not involved in policymaking functions at the bank from the aggregate and individual lending limits, overdraft restriction, and prior approval requirements of Regulation O; (2) to invalidate the Board's regulation insofar as it exempts such executive officers from the prohibition on preferential lending; and (3) to grant the Board authority to extend the remaining parts of its executive officer exemption to directors as well.

Exception for Certain Executive Officers and Directors of Affiliates

Accordingly, the Board is proposing amendments to Regulation O that would eliminate its restrictions—other than the restriction on preferential lending—on a bank's lending to executive officers and directors of affiliates who are not involved in major policymaking functions of the lending bank. The Board believes that extending the exemption to directors would relieve regulatory burden on bank holding companies without increasing the risk of insider lending or resultant safety and soundness problems. Reimposing the preferential lending restriction on executive officers (and maintaining the restriction on directors) might negate some of this relief; although banks would no longer be required to document that loans to executive officers and directors of affiliates fall within the lending limits of Regulation O, they might be required to maintain similar documentation to demonstrate that the loans were not on preferential terms. However, the Board believes that the plain language of the statute requires coverage of preferential lending.

[4] House Report 103–652, 103d Cong., 2d Sess. 180 (1994).

There is some reason to believe that this effect on the Board's regulation was unintended, and that Congress intended for the Board's across-the-board exemption for executive officers of affiliates to continue. The Riegle-Neal conference report stated, ''It is not the intent of the Conferees to affect the exemptions that the Federal Reserve Board has already extended to executive officers, but rather to allow the Board the authority to provide appropriate treatment for directors.'' House Report 103–652 at 180 (1994). However, where, as here, the provisions of a statute are unambiguous, legislative history may not be used to alter that plain meaning. The Board has, however, suggested and supported an amendment to section 22(h) to make its language consistent with its apparent intent.

Elimination of Unnecessary Board of Directors Approval

In order to qualify for the regulatory exception for executive officers of affiliates, an executive officer currently must be excluded from major policymaking functions of the lending bank by resolutions of the board of directors of both the lending bank and the affiliate for which the executive officer works. Because a bank has full control over who participates in its policymaking, the Board believes that requiring a board resolution of the affiliate in addition to the resolution of the bank is superfluous and unduly burdensome. Accordingly, the Board is proposing to delete this requirement from the existing exception for executive officers and not to include it in the new exception for directors.

Regulatory Flexibility Act

The Board has concluded after reviewing the proposed regulation that, if adopted, it would not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions; nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The proposal is designed to reduce the burden of Regulation O consistent with the requirements of the underlying statute. The Board therefore certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605b) that the proposal, if adopted, will not have a significantly adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.).

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0036), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR part 215. This information is required to evidence compliance with the requirements of Section 22(h) of the Federal Reserve Act. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for two years.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0036.

The proposed amendments are expected to provide for some reduction in the recordkeeping and disclosure practices of state member banks, and would not affect the banks' reporting requirements to the Federal Reserve. The recordkeeping and disclosure requirements on extensions of credit by the reporting bank to insiders of the bank and its affiliates are contained in the information collection for the Consolidated Reports of Condition and Income (FFIEC 031–034; OMB No. 7100–0036).

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) whether the proposed revision to the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), the Board is proposing to amend 12 CFR Part 215, subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b (9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

a. Paragraph (d) introductory text and paragraphs (d)(1) through (d)(3) are redesignated as paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iii), respectively;

b. A new paragraph (d)(2) is added; and

c. Paragraph (e)(2) is revised.

The addition and revision read as follows:

§ 215.2.2 Definitions.

* * * * *

(d)(1) *Director of a company or bank*

* * *

* * * * *

(2) *Exception.* Extensions of credit to a director of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4 (b) through (d) and 215.6, provided that—

(i) The director of the affiliate is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolution of the bank's boards of directors, and does not actually participate in such major policymaking functions; and

(ii) The director is not otherwise subject to §§ 215.4 (b) through (d) and 215.6.

(e) * * *

(2) Extensions of credit to an executive officer of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4 (b) through (d) and 215.6, provided that—

(i) The executive officer of the affiliate is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolution of the bank's boards of directors, and does not actually participate in such major policymaking functions; and

(ii) The executive officer is not otherwise subject to §§ 215.4 (b) through (d) and 215.6.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 25, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10733 Filed 5–2–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–45–AD]

RIN 2120—AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation) PA31, PA31P, and PA31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 93–25-08, which currently requires replacing the main landing gear (MLG) actuator reinforcement bracket with a part of improved design on certain The New Piper Aircraft, Inc. (Piper) PA31, PA31P, and PA31T series airplanes. The proposed action would require the same action as AD 93–25–08. An incorrect designation of Piper Model PA31–310 airplanes made in AD 93–25–08 prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent the MLG from extending, when not selected and while the airplane is in flight, caused by actuator reinforcement bracket failure, which could result in substantial airplane damage or loss of control of the airplane.

DATES: Comments must be received on or before July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–45–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

It has been brought to the attention of the FAA that AD 93–25–08, which is applicable to Piper PA31, PA31P, and PA31T series airplanes, should not have listed a Piper Model PA31–310 airplane.

The Piper Model PA31–310 airplane is not a recognized model on Type Certificate Data Sheet No. A20SO. The data plate for the airplane subject to the AD states Piper Model PA31, not a Piper Model PA31–310. A concern was raised that some owners/operators of Model PA31 airplanes may not have complied with AD 93–25–08, since the AD currently specifies the airplane as a Piper Model PA31–310, even though their serial number falls within the serial number range in the current AD. For this reason, the FAA is proposing to supersede the current AD to change the model designation in the Applicability section of the AD from Piper Model PA31–310 airplanes to Piper Model PA31 airplanes.

Piper has issued Service Bulletin (SB) No. 923, dated August 16, 1989, which specifies replacing any MLG actuator reinforcement bracket having part number (P/N) 40776–00 with a new MLG actuator reinforcement bracket, P/N 73786–02.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the MLG from extending, when not selected and while the airplane is in flight, because of actuator reinforcement bracket failure, which could result in substantial airplane damage or loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Model PA31 airplanes of the same type design, instead of Piper Model PA31–310, the proposed AD would supersede AD 93–25–08 with a new AD that would retain the same requirements as AD 93–25–08 and change the model designation in the Applicability section from Piper Model PA31–310 airplanes to Piper Model PA31 airplanes.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $308 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,341,504. AD 93–25–08 currently requires the same actions as is proposed. The only difference between the proposed AD and AD 93–25–08 is the change in model designation from PA31–310 to PA31. With this in mind, the proposed action would not provide any additional cost impact upon U.S. operators over that already required by AD 93–25–08.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 93–25–08, Amendment 39–8774, and by adding the following new airworthiness directive:

The New Piper Aircraft, Inc.: Docket No. 95–CE–45–AD; Supersedes AD 93–25–08, Amendment 39–8774.

Applicability: The following Model and serial number airplanes, certificated in any category.

Model	Serial No.
PA31, PA31–300, and PA31–325	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P	31P–1 through 31P–7730012.
PA31P–350	31P–8414001 through 31P–8414050.
PA31T	31T–7400001 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003 and 31T–1104004 through 31T–1104017.
PA31T2	31T–8166001 through 31T–8166076 and 31T–1166001 through 31T–1166008.
PA31T3	31T–8275001 through 31T–8475001 and 31T–5575001.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 200 hours time-in-service (TIS) after February 11, 1994 (effective date of AD 93–25–08) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent the main landing gear (MLG) from extending, when not selected and while the airplane is in flight, because of actuator reinforcement bracket failure, which could result in substantial airplane damage or loss of control of the airplane, accomplish the following:

(a) Replace any MLG actuator reinforcement bracket having part number (P/N) 40776–00 with a new MLG actuator reinforcement bracket, P/N 73786–02, in accordance with the INSTRUCTIONS section of Piper Service Bulletin (SB) No. 923, dated August 16, 1989.

(b) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Alternative methods of compliance approved in accordance with AD 93–25–08 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 93–25–08, Amendment 39–8774.

Issued in Kansas City, Missouri, on April 26, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11030 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA23, PA31, PA31P, PA31T, and PA42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 86–17–07, which currently requires replacing all hydraulic hoses with hydraulic hoses of an improved design on certain The New Piper Aircraft, Inc. (Piper) PA23, PA31, PA31P, PA31T, and PA42 series airplanes. The proposed action would require inspecting for improperly manufactured hydraulic hoses replaced during a specific time frame and replacing all affected hydraulic hoses. An incorrect designation of a Piper Model PA31–310 and a Piper Model PA23–150 airplane prompted the proposed AD action. The action specified by the proposed AD is intended to prevent hydraulic hose failure which could cause loss of hydraulic capabilities resulting in a gear-up landing and possible loss of the airplane.

DATES: Comments must be received on or before July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–56–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

It has been brought to the attention of the FAA that AD 86–17–07, which is applicable to Piper PA31 and PA23 series airplanes, should not have listed a Piper Model PA31–310 and a Piper Model PA23–150 airplane, respectively. The Piper Model PA31–310 airplane is not a recognized model on the Type Certificate Data Sheet No. A20SO and the airplane's data plate will specify a Model PA31 not a Model PA31–310. Similarly, the Piper Model PA23–150 airplane is not a recognized model on the Aircraft Specification No. 1A10 and the airplane's data plate will specify a Model PA23, not a Model PA23–150. The concern was raised that some owners/operators of PA31 and PA23 series airplanes may not have complied with AD 86–17–07, since the AD currently specifies the airplanes as Piper Models PA31–310 or PA23–150, even though their serial number falls within the serial number range in the current AD. For this reason, the FAA is proposing to supersede the current AD to change the model designation from Piper Models PA31–310 and PA23–150 airplanes to Piper Models PA31 and PA23 airplanes, respectively.

Piper has issued service bulletin (SB), No. 822, dated April 2, 1986, which specifies procedures for inspecting for improperly manufactured hydraulic hoses, part number (P/N) 17766–02 or 465–138, and if found installed, installing hydraulic hoses (P/N 17766–02) to replace the improperly manufactured hydraulic hoses currently in place on the airplane.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to ensure that the correct hydraulic hoses are installed and if not installed, replacing the hydraulic hoses with the correct hoses to avoid a loss of hydraulic capabilities resulting in a gear-up landing and possible loss of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA23, PA31, PA31P, PA31T, and PA42 series airplanes of the same type design, the proposed AD would supersede AD 86–17–07 with a new AD that would retain the same requirements as AD 87–17–07 and change the model designation in the Applicability section from Piper Model PA31–310 and PA23–150 airplanes to Piper Model PA31 and PA23 airplanes, respectively.

The FAA estimates that 10,737 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 hour per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. The FAA is only using the inspection criteria (1 workhour) since there is no way to determine the number of these Piper airplanes already in compliance with AD 86–17–07. Based on the figures above, the initial cost of the proposed AD upon U.S. operators of the affected airplanes is estimated to be $644,220. This figure only includes the cost for the initial inspection and does not include replacement costs of the hydraulic hoses. Parts cost approximately $53 per hydraulic hose. Piper installed on newly manufactured aircraft and distributed approximately 93 defective hoses, which could affect 93 airplanes. The FAA has no way of determining which Piper airplanes may have these improperly manufactured hydraulic hoses installed. Labor costs for the installation of one hose is estimated to be 2 hours at approximately $60 per hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $660,309. The only difference between the proposed AD and AD 87–17–07 is the change in model designation from PA31–310 and PA23–150 airplanes to PA31 and PA23 airplanes, respectively. With this in mind, the proposed action would not provide any additional cost impact upon U.S. operators over that already required by AD 87–17–07.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2.Section 39.13 is amended by removing Airworthiness Directive (AD) 86–17–07, Amendment 39–5400, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 95–CE–56–AD; Supersedes AD 86–17–07, Amendment 39–5400.

Applicability: The following models and serial numbers, certificated in any category.

Models	Serial numbers
PA23 and PA23–160	23–1 through 23–2046.
PA23–235	27–505 through 27–622.
PA23–250	27–1 through 27–8154030.
PA31, PA31–300, and PA31–325	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P	31P–1 through 31P–7730012.
PA31P–350	31P–8414001 through 31P–8414050.
PA31T	31T–7400002 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003, and 31T–1104004 through 31T–1104017.
PA31T2	31T–8166001 through 31T–8166076 and, 31T–1166001 through 31T–1166008.
PA31T3	31T–8275001 through 31T–8475001 and, 31T–5575001.
PA42	42–7800001, 42–7800002, 42–7801003, 42–7801004, 42–8001001 through 42–8001106, 42–8301001, 42–8301002, 42–5501003 through 42–5501023, and 42–5501025.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 25 hours time-in-service (TIS) after September 2, 1986 (the effective date of AD 86–17–07) or within 10 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent hydraulic hose failure which could cause loss of hydraulic capabilities resulting in a gear-up landing and possible loss of the airplane, accomplish the following:

(a) Inspect and replace all hydraulic hoses identified as Piper part number (P/N) 17766–02 or 465–138 and having a smooth rubber surface and a blue colored end nut, with hoses of the same part number having a woven outer covering and black colored end nut, in accordance with the *INSTRUCTIONS* section of Piper Service Bulletin (SB) No. 822, dated April 2, 1986.

Note 2: These hoses were available for installation starting February 1, 1985, and may have been installed in newly manufactured airplanes or as spares at any subsequent time.

(b) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where

the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Alternative methods of compliance approved in accordance with AD 87–17–07 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(e) All persons affected by this directive may obtain a copy of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 86–17–07, Amendment 39–5400.

Issued in Kansas City, Missouri, on April 26, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11027 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 254

Extension of Comment Period; Guides for Private Vocational Schools

AGENCY: Federal Trade Commission.

ACTION: Extension of time for filing public comments.

SUMMARY: The Federal Trade Commission (the ''Commission''), as part of a systematic review of all of its current regulations and guides, requested public comments on April 3, 1996 about its Guides for Private Vocational Schools. 61 FR 14685. The Commission solicited comments until May 3, 1996. In response to requests from interested parties, the Commission grants an extension of the time period to file written comments.

DATES: Written comments will be accepted until July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph J. Koman, Jr., Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4302, 601 Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 326–3014, or Walter Gross III, Federal Trade Commission, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 326–3319.

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–11037 Filed 5–2–96; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 156

Proposed Rulemaking Concerning Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees and Concerning the Publicizing of Broker Association Memberships

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing a rulemaking which would implement the statutory directives of Section 5a(a)(17) of the Commodity Exchange Act (''CEA'') as it was amended by Section 217 of the Futures Trading Practices Act of 1992 (''FTPA'').[1]

The proposed rulemaking would establish a new Commission Regulation 1.69 which would require self-regulatory organizations (''SROs'') to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating and voting on certain matters where the member has either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. The proposed rulemaking also would amend existing Commission Regulations 1.3, 1.41 and 1.63 to make modifications made necessary by new Commission Regulation 1.69. The Commission also is proposing to add a new Regulation 156.4 to require that contract markets make more readily available to the public the identity of members of broker associations at their respective exchanges.

DATES: Comments on the proposed rules and proposed rule amendments must be received by July 2, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5100.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5481.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 217 of the FTPA amended Section 5a(a)(17) of the CEA to provide that each contract market must ''provide for the avoidance of conflict of interest in deliberations by [its] governing board and any disciplinary and oversight committees.'' [2] FTPA Section 217 further describes certain conflict situations where committee members must abstain from deliberations and voting, while also requiring that the Commission promulgate regulations in this regard.

Consistent with Section 217 of the FTPA, proposed Commission Regulation 1.69 would generally bar an SRO committee member from deliberations and voting on a committee decision where the member could potentially be unduly influenced, due to either financial or personal concerns, by the outcome of the decision. The Commission's proposed rulemaking is intended to ensure that SRO committee actions are not infected by any conflict of interest and are in the best interest of the entire SRO. By furthering the impartiality of the SRO decisionmaking process, the Commission believes that Regulation 1.69 should promote public confidence in the integrity of the self-regulatory process.[3]

[1] Pub. L. No. 102–546, sec. 217, 106 Stat. 3590 (1992).

[2] For the purposes of this release, the term ''committee'' will generally be used to include governing boards, disciplinary committees and oversight committees unless otherwise specified.

[3] The Commission notes that proposed Regulation 1.69 would be the latest in an ongoing series of recent Commission rulemakings aimed at enhancing the fairness and impartiality of the SRO committee decisionmaking process. In 1990, the Commission adopted Regulation 1.63 prohibiting persons with histories of disciplinary violations from serving on various SRO committees. Prompted by the FTPA, in 1993, the Commission adopted three separate rulemakings dealing with SRO committee procedures and service. First, the

Continued

The Commission notes that the governing boards of futures exchanges are legally bound to not act in ''bad faith'' when taking actions on behalf of an exchange. This ''bad faith'' standard was first articulated in *Daniel* v. *Board of Trade of the City of Chicago*, 164 F.2d 815 (7th Cir., 1947), a case arising from Chicago Board of Trade (''CBOT'') emergency actions raising the price limits on various grain futures contracts due to price volatility. The plaintiffs in the case lost money on their grain positions as a result of the CBOT's actions and claimed that the CBOT's Board members acted ''wilfully, maliciously, and for their own personal gain'' in imposing the emergency price limits. 164 F.2d at 818. In the *Daniel* case, the Court recognized that while exchange boards have a ''duty'' to address market emergencies, they also have a ''relation to the public'' which requires that they ''act with the utmost, objectivity, impartiality, honesty, and good faith.'' 164 F.2d at 819–20. In order to prevail in a suit challenging an emergency action, the Court determined that the plaintiff must show ''bad faith amounting to fraud,'' since fraud would imply a board's breach of its public trust. *Id*.

The ''bad faith'' standard governing exchange boards has been consistently followed and further refined by the Commission and the courts. Most recently, the Commission included a bad faith standard as part of its amendment to Commission Regulation 1.41(f) setting forth standards to be used by the Commission in assessing temporary exchange actions addressing Regulation 1.41(a)(4) emergencies.[4] The courts have applied the ''bad faith'' standard a number of times to cases where a board member may have had a personal financial interest in a board decision due to his market position.[5]

The Commission believes that by including more specificity in the factors to be considered with respect to barring persons with potential financial or personal interests from deliberating and voting on committee decisions, the proposed rulemaking should reduce the potential for collateral attack of such committee decisions on the grounds that they were made in ''bad faith.'' The Commission has attempted to structure proposed Regulation 1.69 to provide guidance to SROs, consistent with the new provisions of the FTPA, on what type of committee member circumstances could be the basis for ''bad faith'' challenges.

In proposing Commission Regulation 1.69, the Commission does not intend to exclude the views of any particular group or groups represented on SRO committees. By requiring that committee members with potential biases abstain from participating in committee proceedings, the Commission is attempting only to ensure that SRO committee decisions serve the best interests of the entire SRO membership and the public, rather than the self-interests of a few committee members.[6]

II. Description of Proposed Rulemaking

The following description consists of a section-by-section analysis of the Commission's proposed rulemaking. In addition to explaining the rationale and operation of the proposal, this description is intended to provide interested persons with a framework for addressing issues which may be raised by particular provisions of the rulemaking.

A. Proposed Regulation 1.69(a)—Definitions[7]

1. Self-Regulatory Organizations

Proposed Regulation 1.69's conflicts restrictions would apply to each SRO governing board, disciplinary committee and oversight panel. Proposed Regulation 1.69(a)(6)'s definition of SRO would include contract markets, clearing organizations and registered futures associations (''RFAs''). While Section 217 of the FTPA specifies that ''contract markets'' must adopt conflict of interest provisions, the Commission believes that it is appropriate for proposed Regulation 1.69's conflicts restrictions to extend to clearing organizations and RFAs as well.

In making clearing organizations subject to proposed Regulation 1.69, the Commission notes that FTPA Section 217 requires that its conflicts restrictions apply to committees handling certain types of margin changes. Margin levels in the futures industry, however, are established by both contract markets and clearing organizations. The Commission does not find any reason to distinguish between contract markets and clearing organizations with respect to the potential for conflicts of interests when making margin decisions. In addition, there are already a number of instances where the Commission has taken CEA requirements addressed to contract markets and applied them to clearing organizations. For example, Section 5a(a)(12)(A) of the CEA mandates Commission review of ''contract market'' rules, while Commission Regulation 1.41, which establishes procedures for Commission review of such rules, specifically includes clearing organizations within the definition of contract markets for these purposes. For these reasons, the Commission believes that it would be appropriate to make clearing organizations subject to proposed Regulation 1.69.

The Commission also believes that it would be beneficial to apply its proposed rulemaking to RFAs in order to ensure that their committees would be able to make decisions which were free from the potential taint of committee member bias and self-interest.[8]

The Commission particularly seeks comment on its proposed definition of SRO and whether it would be consistent with the principles endorsed by FTPA Section 217 to extend this proposed rulemaking to clearing organizations and RFAs in addition to contract markets.

2. Governing Boards and Oversight Panels

Proposed Regulation 1.69(a)(2)'s definition of governing board would

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Commission amended Regulation 1.41 to establish conditions under which contract markets may take emergency actions without prior Commission approval, while also establishing specific procedures for Commission review of such emergency actions. Second, the Commission amended Regulation 1.59 to enhance its prohibition of SRO governing board members and employees disclosing or trading on inside information. Third, the Commission promulgated Regulation 1.64 which establishes committee composition requirements to ensure that a diversity of each SRO's membership is represented on its committees.

[4] Under Regulation 1.41(f)(4)(i), within ten days after Commission receipt of a notice of an exchange temporary emergency action, the Commission will make a determination to permit such an action to remain in effect unless it is: (1) arbitrary, capricious or an abuse of discretion; (2) lacking a reasonable basis in fact; or, (3) taken in bad faith by the contract market or its officials.

See 58 FR 26229 (May 3, 1993) for a full description of the Commission's rulemaking regarding the review of contract market emergency actions.

[5] *See*, e.g., *Sam Wong & Sons, Inc. v. New York Mercantile Exchange*, 735 F.2d 355 (7th Cir. 1975) and *Bishop v. Commodity Exchange, Inc.*, 564 F.Supp. 1557 (S.D.N.Y. 1983).

[6] The Commission notes that current Regulation 1.64 establishes composition requirements for SRO committees in order to ensure that a diversity of membership interests are represented on such committees. *See* 58 FR 37644 (July 13, 1993) for a full description of Commission Regulation 1.64 and its underlying rationale. In this connection, the Commission specifically invites comment on how to balance the goals of Regulation 1.64 and the goals of FTPA Section 217 and proposed Commission Regulation 1.69 with respect to conflicts.

[7] This section will discuss only those term definitions which could raise noteworthy issues.

[8] As noted in footnote 10 below, however, the rulemaking would have a more limited impact on RFAs as opposed to contract markets and clearing organizations.

include any SRO ''board of directors, board of governors, board of managers, or any similar body'' and any subcommittee thereof, such as an executive committee, which is authorized to take action on behalf of the SRO. Proposed Regulation 1.69 also would apply to SRO oversight panels which have the responsibility of formulating and carrying out an SRO's self-regulatory responsibilities.[9]

3. Disciplinary Committees

Proposed Regulation 1.69(a)(1) would define an SRO ''disciplinary committee'' to mean a body which was authorized by an SRO ''to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof.'' [10] This definition, in combination with the proposed formulation of Regulations 1.69(b)(1) and (2), would ensure that Regulation 1.69's conflicts restrictions would apply to disciplinary committee members when they deliberated and voted on matters as a body, but would not apply to members of disciplinary committees when they individually exercised disciplinary powers. Thus, it would not include a floor committee member who disposes of minor disciplinary violations by individually issuing summary fines or other limited penalties, but it would apply to instances where more than one floor committee member is required to endorse a decision.

While the Commission recognizes that restrictions on conflicted members participating in disciplinary matters promotes the impartiality of the disciplinary process, it also believes that applying such restrictions to floor committee members acting individually may present countervailing problems. One apparent disadvantage of such an application would be that it might actually diminish the coverage of an SRO's compliance program. For example, if an individual floor committee member were subject to Regulation 1.69's conflicts restrictions, he would be prohibited from summarily fining any floor trader with whom he had one of the specified relationships, even if he directly observed violative conduct by such a trader. In those instances where such a floor committee member was the only committee member responsible for monitoring trading activity in a particular pit, such behavior might go unpunished.

Applying conflicts restrictions to disciplinary committee members when they act individually might also present more practical difficulties. As currently proposed, Regulation 1.69 would require that before each disciplinary proceeding SRO staff must determine whether any committee member has a conflict in the matter. Floor committee members, however, typically issue summary fines to SRO members who commit minor rule violations on the trading floor (e.g., violations of dress and decorum rules). Requiring floor committee members to submit to some prior staff review in these circumstances could undermine, or possibly eliminate, their ability to discipline violative behavior expeditiously.

The Commission seeks comment on its proposed application of Commission Regulation 1.69's conflicts restrictions to disciplinary committees and floor committees in particular. Does the current proposed approach strike an equitable balance between the need for an impartial disciplinary mechanism versus the need for the deterrent effect of having floor committee members on exchange trading floors? Are there other ways in which to further both of these goals?

4. Significant Actions

As explained below, proposed Regulation 1.69's conflicts restrictions would apply to SRO committees when they consider any ''significant action which would not be submitted to the Commission for its prior approval.'' Proposed Regulation 1.69(a)(7)'s definition of that term would include, at a minimum, two types of SRO actions. First, the term would include SRO actions or rule changes which address emergencies at an SRO, as they are defined by Commission Regulation 1.41(a)(4), including actual or attempted market corners, squeezes or manipulations. Second, proposed Regulation 1.69(a)(7)'s definition also would include SRO margin changes which ''respond to extraordinary market conditions when such conditions are likely to have a substantial effect on prices in any contract traded or cleared'' at the SRO.[11]

The proposed definition of a ''significant action which would not be submitted to the Commission for its prior approval'' generally follows Congress' definition of that same term in FTPA Section 217. The Commission believes that its proposed definition should capture those circumstances in which a committee member's conflict would have the greatest potential to influence SRO actions. The proposed definition has been limited to committee actions which could have an immediate impact on the marketplace and, consequently, the positions of SRO committee members, because those are the situations in which a decision-maker most likely would be influenced by self-interest. The proposal does not intend to suggest that any particular significant action would have a predictable impact on market prices; in fact, the experience of the Commission in assessing the consequences of prior emergency actions has been to the contrary. That being said, it is critical for public confidence in self-regulation that such actions be perceived as being applied even-handedly and not to the advantage or disadvantage of any given group. The Commission has attempted to formulate a definition which addresses the objectives explicitly set forth in the legislation the rulemaking is intended to implement, but which, at the same time, does not do unnecessary injury to the mechanics of the SRO committee decisionmaking process and the ability of the SRO to engage in effective self-governance activities.

The Commission seeks comment on whether there are any other types of SRO actions or rule changes which should be subject to Regulation 1.69's conflicts restrictions. For instance, the Commission currently proposes to limit

[9] In order to consolidate the Commission's Regulations, ''oversight panel'' would be defined by a new Commission Regulation 1.3(tt). That provision would define oversight panel for application in both current Regulation 1.63 and proposed Regulation 1.69. The definition would be identical to Commission Regulation 1.63(a)(4)'s current oversight panel definition.

The Commission notes that its ''oversight panel'' definition is intended to cover floor committees when they make decisions such as changing a price quote on a price change register, setting modified closing call ranges and establishing settlement prices. Please comment on whether the oversight panel definition needs to be clarified in any way to incorporate floor committees when they engage in such activities.

[10] In this connection, the Commission also is proposing to amend Regulation 1.63's definition of ''disciplinary committee'' so that it will be identical to proposed Regulation 1.69(a)(1). To make these two definitions identical, Regulation 1.63(a)(2) would be revised by deleting ''disciplinary hearings'' and substituting ''disciplinary proceedings.''

[11] Notably, under this definition, RFA committees would not consider either of the two types of SRO actions which would constitute a ''significant action which would not be submitted to the Commission for its prior approval.'' Accordingly, this aspect of Regulation 1.69's conflicts restrictions would be inapplicable to RFA committee members. *See* proposed Commission Regulation 1.69(b)(2) and Section II.C. below. RFA committee members would, however, be subject to proposed Regulation 1.69(b)(1)'s restrictions on SRO committee members considering matters in which they had a relationship with the named party in interest (*e.g.*, disciplinary cases). *See* proposed Commission Regulation 1.69(b)(1) and Section II.B. below. The Commission invites comment on whether it should revise proposed Commission Regulation 1.69 to specifically exclude RFA committees from being subject to Regulation 1.69(b)(2)'s restrictions on SRO committees which consider a ''significant action which would not be submitted to the Commission for its prior approval.''

the conflicts restrictions to SRO actions which would not be submitted for prior Commission review, because the Commission approval process is intended to consider the public interest and to insulate SRO actions from impropriety. The rule approval process requires a discussion of all opposing views and a statement of the purpose of each rule change. Ordinarily, such rule changes do not even have the potential to affect prices. Nonetheless, the Commission requests comment on whether the public interest would be better served if a broader range of SRO actions, whether or not there was prior Commission review, were subject to conflicts restrictions. If so, what other types of SRO actions should be covered?[12]

B. Proposed Regulation 1.69(b)(1)—Relationship With Named Party in Interest

Proposed Regulation 1.69(b)(1) would mandate that SROs implement rules requiring that committee members abstain from deliberating and voting on any matter in which they had a significant relationship with the matter's ''named party in interest.''[13] Proposed Regulations 1.69(b)(1) (i) through (v) would list the types of relationships between a committee member and named party in interest which would require abstention, including family[14] and employment[15] relationships.

Another type of relationship which would be the basis for abstention, under proposed Regulation 1.69(b)(1)(iv), would be if the committee member and the named party in interest had a ''significant, ongoing business relationship.'' Under this provision, for example, a committee member would be prohibited from participating in a matter in which he and the named party were co-owners of a business venture. In order to clarify this provision, the Commission proposes to include any clearing relationship within the scope of a ''significant, ongoing business relationship,'' but proposes to exclude relationships which are limited to executing futures or option contract transactions[16] with each other. In drawing this distinction, the Commission notes that two parties in a clearing relationship typically rely upon each other, to some degree, to carry on their respective businesses. Accordingly, the Commission believes that parties to a clearing relationship may not be totally impartial if one party was involved in considering an SRO committee action which directly bore upon the other party. The Commission notes that under proposed Commission Regulation 1.69(b)(1)(iii), members of a broker association would be required to abstain from deliberations and voting on any SRO committee matter in which one of its members was a named party in interest.

The Commission invites comment as to whether any other specific type of relationship should be included or excluded as a ''significant, ongoing business relationship'' for the purposes of proposed Regulation 1.69(b)(1)(iv). For example, two SRO members might do a significant amount of transactional business with each other outside of the SRO as counterparties in the over-the-counter market. Could such a relationship give rise to a potential conflict because of the frequency of contacts? Or, should whether or not a transaction is arms length govern the possibility for conflicts?

While the Commission anticipates that proposed Regulation 1.69(b)(1)'s restrictions would most oftentimes be applied to disciplinary cases because they involve named respondents, the provision also would pertain to any matter handled by an SRO governing board, disciplinary committee or oversight panel in which there was a particular named party in interest. Accordingly, the proposed conflict restrictions would apply to such committees if they were to review a membership application or consider some action with respect to a particular individual (*e.g.*, directing a person to reduce his position in a contract).

The Commission believes that this proposed provision should reduce the potential for committee members to be unduly influenced by family and personal business considerations. Accordingly, the provision should help to assure that committee decisions will be the result of fair deliberations and will not be tainted by the real or perceived self-interest of committee members.

The Commission notes that Section 217 of the FTPA states that contract markets must adopt rules requiring that committee members abstain from ''confidential'' deliberations and voting on matters where they have a relationship with the named party in interest. Commission Regulation 1.69(b)(1), which is being proposed in furtherance of that provision, takes the more prophylactic approach of applying its conflicts restrictions to all deliberations and voting on such matters, whether they are confidential or non-confidential. The Commission believes that this approach should help to reduce the potential for biased decisionmaking in both settings. Theoretically, in non-confidential committee meetings outsiders would be able to monitor the fairness of a committee's decision-making process. The Commission questions, however, whether there could ever be an effective outside presence at SRO committee proceedings given their history of usually being closed to the public. In addition, the Commission believes that even in a public setting it would be difficult to detect any one committee member's bias or prejudice on a matter unless the member also publicly disclosed any possible relationships with the named party in interest.

C. Proposed Regulation 1.69(b)(2)—Financial Interest in an Action

Proposed Commission Regulation 1.69(b)(2) would require that SRO committee members abstain from committee deliberations and voting on certain matters in which they would have a ''direct and substantial financial interest.'' The proposed restriction would only apply when a committee is considering ''a significant action which would not be submitted to the Commission for its prior approval.'' As discussed in Section II.A. above, those committee actions would include, at a minimum, Regulation 1.41(a)(4) emergency actions and margin changes which respond to market conditions which are likely to have a substantial effect on the prices of any contract traded or cleared at the SRO.[17]

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[12] For example, should changes to a price quote on a price change register, setting modified closing call ranges, or establishing settlement prices be particularly included in Regulation 1.69's definition of a ''significant action which would not be submitted to the Commission for its prior approval.''

[13] For these purposes, proposed Commission Regulation 1.69(a)(5) would define a ''named party in interest'' as a ''party who is identified as the subject of any matter being considered'' by an SRO committee.

[14] Proposed Regulation 1.69(b)(1)(v) would prohibit a committee member from deliberating and voting on a matter if he was in the immediate family of the named party in interest. Proposed Regulation 1.69(a)(3) would define ''immediate family'' to mean a person's ''spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law.''

[15] Under proposed Regulation 1.69(b)(1)(ii), a committee member could not deliberate or vote on any matter in which the named party interest was an employer, employee or fellow employee of the committee member.

[16] For these purposes, the Commission would consider exchange of futures for physical transactions and CEA Section 4(c) contract market transactions to be futures and option contract transactions under proposed Regulation 1.69(b)(1)(iv).

[17] *See* proposed Commission Regulation 1.69(a)(7).

In determining a committee member's financial interest in a possible committee action, Regulation 1.69(b)(2) would require SROs to review for positions of the member, the member's family, the member's firm and the customers of the member's firm held in any contract which could be affected by the committee action.[18] With respect to a committee member's personal positions, proposed Regulations 1.69(b)(2) (i) and (ii) specifically would require that SROs consider gross positions in the subject contract held in the member's personal accounts, the member's Regulation 1.3(j) controlled accounts and any accounts in which the member had a significant financial interest.

Regarding positions of the member's family, proposed Regulation 1.69(b)(2)(iv) would require that SROs review gross positions held in the personal accounts or Regulation 1.3(j) controlled accounts of the member's immediate family. For these purposes a committee member's immediate family would be defined by proposed Regulation 1.69(a)(3), excluding those immediate family members who were not dependents of the member and who did not reside with the member. The Commission has proposed this exclusion in order to limit the provision to position information which a committee member likely would know in the ordinary course.

SROs reviewing for a committee member's financial interest in a committee matter also would be required to consider gross positions held in the member's firm's proprietary accounts, net positions held in customer accounts at the member's firm and gross positions held by any customers who constituted a significant proportion of business for the member's firm.

Proposed Commission Regulation 1.69(b)(2) would specifically fix the types of positions which SROs would have to review in determining whether a committee member had a ''direct and substantial financial interest'' in the outcome of the committee's consideration of ''a significant action which would not be submitted to the Commission for its prior approval.'' The proposal would not, however, set any specific standards as to what position size warranted a member's abstention from deliberations and voting on a matter. Rather, the Commission has endeavored to give SROs flexibility in complying with this aspect of its proposed rulemaking.

The criteria for each SRO in evaluating whether a committee member would have a ''direct and substantial financial interest'' in a committee action must be the extent to which an individual would be exposed to market risk, the size of the individual's positions, whether or not market neutral, relative to the market and, with respect to a committee member's affiliated firm, the potential effect on the firm's capital. The Commission would expect each SRO to weigh a variety of factors in making these determinations. Each SRO should assess the magnitude and probable market impact of the underlying ''significant action.'' A possible margin change or emergency action for a contract might be so profound that even the smallest position in the contract could be affected by the measure. Likewise, a committee member might not have a particularly large position in any one of the categories listed in Regulation 1.69(b)(2) (i) through (vi). However, if a member's positions in each one of these categories were similarly aligned such that they all would be favorably or unfavorably impacted by even a moderate margin change, the member should be required to abstain from participating in deliberations and voting on such a possible margin action.

The Commission invites comment on its proposed approach to determining whether a committee member has a ''direct and substantial financial interest'' in a matter being considered by an SRO committee. What numerical thresholds for margin changes or position sizes could the Commission establish for SROs in this regard? What other requirements could the Commission impose in this area to require SROs to make more objective abstention decisions? For example, a straightforward approach to this issue could be to require abstention by committee members with any position in a contract which could be impacted by a committee's significant action. Please comment on the effect of such an approach.

D. Proposed Regulation 1.69(b)(3)—Abstention Decision

Proposed Commission Regulation 1.69(b)(3) would mandate procedures which SROs would have to follow in determining whether any SRO committee members must abstain from deliberations and voting on a matter due to a conflict. These procedural requirements would apply whenever an SRO governing board, disciplinary committee or oversight panel took up a matter involving: (1) a named party in interest (*See* proposed Regulation 1.69(b)(1)); (2) an action or rule change addressing a Regulation 1.41(a)(4) emergency (*See* proposed Regulations 1.69(a)(7)(i) and 1.69(b)(2)); or, (3) a margin change designed to respond to extraordinary market conditions when such conditions would be likely to have a substantial effect on prices in any contract traded at the SRO (*See* proposed Regulations 1.69(a)(7)(ii) and 1.69(b)(2)).

Prior to a committee's consideration of any such matter, proposed Regulation 1.69(b)(3) would require the SRO's staff to make a determination whether any member of the committee was subject to any of the conflicts situations listed in Regulations 1.69(b) (1) and (2). In determining whether a conflict existed under Regulation 1.69(b)(1), the Commission would expect SRO staff to ascertain whether any committee member had a relationship with the named party in interest based upon its available records and questioning of the committee's members. In the case of conflicts based upon a committee member's financial interest in a committee's action under Regulation 1.69(b)(2), SRO staff would be required to review the positions listed in Regulation 1.69(b)(2) for each committee member. In ascertaining this position information, an SRO's staff would be permitted to rely upon:

(1) The most recent large trader reports and clearing records available to the staff;

(2) Position information provided to the staff by committee members pursuant to Regulation 1.69(c);[19] and,

(3) Any other source of position information which was readily available to the staff.[20]

The Commission believes that by consulting this range of easily accessible sources of position data, SRO staffs should be able to make a well-informed decision as to whether any committee member has a financial interest in a committee action.

Under proposed Regulations 1.69(b)(3)(i) (B) and (C), SRO staff would be required to determine whether any committee member had a conflict, under either Regulation 1.69(b)(1) or (2), and

[18] While proposed Regulation 1.69(b)(2) would specify what positions SROs must review in determining whether an SRO committee member would have a ''direct and substantial financial interest'' in an SRO committee action, proposed Regulation 1.69(b)(3) would specify what sources of position information an SRO would be required to consider, at a minimum, in making such a determination. *See* Section II.D. of this release below for a further description of Regulation 1.69(b)(3).

[19] *See* proposed Commission Regulation 1.69(c) and related Section II.F. of this release below for a description of each committee member's position reporting responsibility.

[20] Proposed Commission Regulation 1.69(b)(3)(i)(A) (1) through (3).

to direct any committee member with such a conflict to abstain from deliberations and voting on the matter.

Whenever SRO staff made an abstention determination pursuant to proposed Regulation 1.69(b)(3)(i), proposed Commission Regulation 1.69(b)(3)(ii) would require the SRO committee considering the underlying substantive matter to include certain information regarding the abstention determination in the minutes of its meeting. Such a record would be required to indicate, among other things, the committee members who attended the meeting, the staff member(s) who reviewed the committee members' positions, a listing of the position information reviewed for each committee member, the names of any committee member directed to abstain and the reasons thereof. The Commission believes that these recordation requirements would enable SROs to demonstrate the propriety of their abstention decisions should they be called into question by either SRO members, the Commission or the public. In addition, such records would be useful to the Commission in any future evaluation of Regulation 1.69 and the SROs' implementing rules and procedures.

In instances when a committee member was permitted to deliberate but not vote on a matter pursuant to proposed Commission Regulation 1.69(b)(4), the committee's records would be required to include a full description of the views expressed by such member during the committee's deliberations on the underlying substantive matter. This description should not be limited to a recital of the committee member's presence at the meeting, but should detail the views and supporting arguments offered by the member at such meeting. To ensure a full description of the member's views, SRO committees should consider making transcripts of the pertinent portions of such a meeting. The Commission believes that this requirement should deter such a committee member from offering strictly self-interested advice to an SRO committee.

Under proposed Regulation 1.69(b)(3), the Commission would confer the responsibility for making abstention determinations on SRO staff. The Commission believes that this approach would best assure that the process of making such determinations would not adversely impact the SRO committee decisionmaking process.

The Commission understands that this provision's proposed approach would closely follow the procedures which most SROs currently use when handling committee member conflicts. Notably, a number of SRO staff members indicated to Commission staff that SRO committee members rarely resist their staffs' abstention recommendations based upon potential conflicts.

The Commission invites comment on the efficiency of these proposed procedures for handling abstention decisions, and particularly its approach to having SRO staff gather position information. Would the proposed procedures be administratively burdensome for SRO staffs or should the Commission grant SRO staffs more discretion in this regard? Would the specified range of position information to be gathered provide a sufficient basis for making a fair assessment of a committee member's potential conflict of interest with respect to any particular committee matter?

Should the Commission's rulemaking include any provisions for appealing abstention determinations by SRO staff? For instance, should the rulemaking allow SRO committees to include ''conflicted'' members in deliberations and voting on matters when the member's vote was needed to obtain a quorum? [21]

E. Proposed Regulation 1.69(b)(4)—Participation in Deliberations

In a limited number of circumstances, proposed Commission Regulation 1.69(b)(4) would permit SRO committees to allow a committee member, who otherwise would be required to abstain from deliberations and voting on a matter because of a conflict, to deliberate but not vote on the matter.[22] Regulation 1.69(b)(4) only would permit such a ''deliberation exception'' for matters in which a committee member ''knowingly [had] a direct and substantial interest in the result of the vote'' under proposed Regulation 1.69(b)(2). Consistent with Section 217 of the FTPA, this exception would not apply to matters in which a committee member had a conflict, under proposed Regulation 1.69(b)(1), due to his or her relation with the matter's named party in interest.

While the conflicts restrictions established by Section 217 of the FTPA further the fairness and integrity of the decisionmaking processes of SRO committees, Section 217 also recognizes that in some instances a committee member with a conflict with respect to a particular matter might also have special knowledge or experience regarding that matter. Accordingly, proposed Regulation 1.69(b)(4) would allow such members to participate in deliberations only, but subject to qualifying criteria limiting such participation to instances where the committee believed that it had insufficient expertise to consider a matter and needed such a member to participate.

In determining whether to permit a committee member to deliberate on a matter, proposed Regulation 1.69(b)(4)(i) would require the presiding committee to consider a number of factors including: (1) Whether the member had special expertise in the matter involved which few or no other members of the committee had; (2) whether the committee's ability to meaningfully deliberate would be adversely affected by the member's non-participation; and (3) whether the member's participation in deliberations would be necessary for the committee to obtain a quorum.[23]

Given the factors which must be considered, the Commission believes that deliberation exception decisions should be made by the committee involved, rather than SRO staff. For any particular matter to be considered by an SRO committee, the committee members themselves would be in a better position than SRO staff to assess their individual levels of expertise in the matter and their need for input during deliberations from the committee member who otherwise would be required to abstain.

In order to help ensure that committees handle deliberation exception decisions in an impartial manner, proposed Commission Regulation 1.69(b)(4)(ii) would require that any such exception must be approved by all ''public'' members of the presiding committee (*i.e.*, committee members who are not members of the SRO) who were present when the

[21] Note that, as described in Section II.E. below, the Commission's proposed rulemaking already would permit, in specified circumstances, ''conflicted'' committee members to participate in committee deliberations, but not voting, on certain matters.

[22] Under Regulation 1.69's proposed abstention determination procedures, SRO staff would make the initial determination of whether a committee member should be required to abstain from deliberations and voting on any particular committee matter. For reasons discussed in this section below, however, the Commission proposes that only SRO committees, and not SRO staff, be able to permit a committee member to participate in deliberations, but not voting, on a committee matter.

[23] This factor presumes that an SRO's quorum requirement is based upon the number of committee members who can deliberate on a matter and not upon the number of committee members who can vote on a matter. *See* Robert's Rules of Order § 3 (Henry M. Roberts III and William J. Evans, eds., 9th Ed. 1990). The Commission invites comment from SROs on whether the proposed approach would be consistent with their committees' quorum requirements.

committee made such a determination. This requirement would not apply to those SRO governing boards, disciplinary committees or oversight committees which do not normally have public members.[24]

The Commission invites comment on its proposal to permit, in certain circumstances, an SRO committee member, who otherwise would be required to abstain from deliberations and voting on a matter because of a conflict, to deliberate but not vote on the matter. Notwithstanding the statute, should the possibility of allowing an interested committee member to participate in deliberations be further limited or even prohibited entirely? Would the proposed exception for deliberations provide a person who could not vote on a matter with an opportunity to unduly influence a committee's decision? Would the proposed requirements strike a proper balance between ensuring that SRO committees make well-informed decisions while minimizing the influence of a committee member's potential bias or self-interest in the matter?

F. Proposed Regulation 1.69(c)—Disclosure Requirement

Under proposed Commission Regulation 1.69(c), whenever an SRO committee considered a ''significant action which would not be submitted to the Commission for its prior approval,'' as that term is defined by proposed Regulation 1.69(a)(7), each member of the committee would be required to disclose to the SRO's staff any position information which was known or should have been known by the member with respect to the positions listed in Regulation 1.69(b)(2) (*i.e.*, positions held by the member, the member's family, the member's firm and certain customers of the member's firm). Proposed Regulation 1.69(c) would make it a direct violation of the Regulation, prosecutable by the Commission, for any committee member to fail to report such information to the SRO's staff.

For the purposes of this provision, committee members would be presumed to have knowledge of gross positions held in: (1) the member's personal or controlled accounts (See proposed Regulation 1.69(b)(2)(i)); (2) accounts in which the member had a significant financial interest (See proposed Regulation 1.69(b)(2)(ii)); (3) proprietary accounts at the member's firm (See proposed Regulation 1.69(b)(2)(iii)); and, (4) the personal or controlled accounts of persons in the member's immediate family (excepting family members who were not dependents of the committee member and did not reside at the member's residence) (*See* proposed Regulation 1.69(b)(2)(iv)). While it would always be a question of fact as to what position information a committee member knew at a particular point in time, the Commission believes that a committee member usually should be aware of this type of position information because it would be based on either his own trading activity or the trading activity of parties with whom he would have a close relationship. This presumption of knowledge would be rebuttable, but the committee member involved would bear the burden of providing evidence of his or her lack of knowledge.

The Commission believes that its proposed Regulation 1.69(c) reporting requirement should help SRO staff and committees to better determine whether committee members have conflicts which warrant abstention from committee deliberations and voting. In addition, the Commission believes that its enforcement powers under Regulation 1.69(c) should help ensure compliance with the conflicts restrictions. Of course, each SRO would continue to have an independent responsibility under Section 5a(8) of the CEA and Commission Regulation 1.51 to enforce any of its own rules implementing Regulation 1.69.

G. Proposed Regulation 1.69(d)—Violations of SRO Rules

Proposed Commission Regulation 1.69(d) would make it a violation for an SRO to permit a committee member to participate in deliberations or voting on a matter if such participation would violate any SRO rule implementing the conflicts restrictions of Commission Regulations 1.69(b) (1) or (2). As with proposed Regulation 1.69(c), Regulation 1.69(d) would enable the Commission to enforce the conflicts restriction requirements as implemented by SRO rules if necessary. The Commission believes that this reservation of enforcement power would be appropriate given Regulation 1.69's purpose of upholding the fairness and integrity of the SRO decisionmaking process.

The Commission invites comment on the appropriate enforcement mechanisms for implementing the FTPA's conflicts restrictions.

H. Proposed Regulation 1.69(e)—Liability to Other Parties

Under proposed Commission Regulation 1.69(e), SROs, SRO officials and SRO staffs involved in reviewing committee member positions and making abstention decisions, pursuant to Regulation 1.69(b)(3), would be protected from liability to any party other than the Commission. This limitation of liability is mandated by Section 217 of the FTPA.

I. Amendments to Current Commission Regulations Made Necessary by Proposed New Commission Regulation 1.69

1. Proposed Regulation 1.3(tt)—Definition of Oversight Panel

As indicated in Section II. A. above, the Commission proposes to establish a definition for oversight panels in the definitional section of the Commission's regulations. The definition would be identical to the definition of oversight panel in current Commission Regulation 1.63(a)(4). As part of its proposal, the Commission would delete Regulation 1.63(a)(4) and make the new Regulation 1.3(tt)'s definition of oversight panel applicable to both Regulation 1.63 and proposed Regulation 1.69.

2. Proposed Regulation 1.41(f)—Voting on Temporary Emergency Rules

Section 213 of the FTPA amended Section 5a(a)(12)(B) of the CEA to require that the Commission issue regulations establishing ''terms and conditions'' under which contract markets may take temporary emergency actions without prior Commission approval. Section 5a(a)(12)(B) and Regulation 1.41(f), the Commission's implementing regulation, require that any such temporary emergency action be adopted by a two-thirds vote of a contract market's governing board. In recognition of the fact that governing board members may be required to abstain from deliberations and voting on such an action under contract market rules implementing proposed Regulation 1.69,[25] as part of its rulemaking the Commission is proposing to amend Regulation 1.41(f) to provide that such abstaining board members should not be included in determining whether a temporary emergency action has been approved by two-thirds of a governing board.

[24] *See* Commission Regulations 1.64 (b) and (c) which respectively require governing boards and certain disciplinary committees to include non-SRO member representatives.

[25] Contract market governing board members would be subject to Regulation 1.69's conflict restrictions whenever they considered such temporary emergency actions. *See* proposed Commission Regulations 1.69(a)(7)(i) and 1.69(b)(2).

J. Proposed Regulation 156.4—Disclosure of Broker Association Membership

Section 102 of the FTPA amended Section 4j(d) of the CEA to prohibit the knowing execution of a customer order by a floor broker opposite any broker or trader with whom the floor broker has a specified business relationship, unless the Commission has adopted rules requiring exchange procedures and standards designed to prevent violations of the CEA attributable to broker association trading. In response to this provision, the Commission adopted Part 156 to its regulations in order for contract markets to identify and enhance surveillance of broker associations.[26] Among other things, the Commission's Part 156 Regulations require that contract markets register broker associations at their respective exchanges and maintain records listing ''the name of each person who is a member or otherwise has a direct beneficial interest in [a] broker association.''

As part of the current rulemaking, the Commission is proposing to amend its Part 156 Regulations by adding a new Regulation 156.4 which would require contract markets to post a listing of the broker association membership information which they are currently required to compile pursuant to Regulation 156.2(b). This posting should be made in a place designed to ensure its availability to the general public such as an exchange's lobby or other common access area. The Commission believes that this requirement would serve the public interest by enabling the public to take broker association relationships into account when making trading decisions and assessing exchange actions generally.

III. Conclusion

The Commission believes that the proposed new Regulation 1.69 and the proposed amendments to Regulations 1.3, 1.41 and 1.63 meet the statutory directive of Section 5a(a)(17) of the CEA as it was amended by Section 217 of the FTPA. The proposal would establish guidelines and factors to be considered in determining whether an SRO committee member was subject to a conflict which could potentially impinge on his ability to make fair and impartial decisions in a matter and, thus, warrant abstention from participating in committee deliberations and voting.

[26] *See* 58 FR 31167 (June 1, 1993) for a full description of the Commission's Part 156 rulemaking regarding broker associations.

The Commission invites public comments on any aspect of this proposed rulemaking, including whether it would fulfill the implementation requirements of FTPA Section 217. The Commission also invites comment on whether any other revisions should be made to ensure greater fairness and impartiality in the decisionmaking processes of SRO committees. For instance, would it be beneficial for the Commission to amend current Commission Regulation 1.64 to provide a higher level of representation for public, non-SRO members on SRO boards and committees?

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets. 47 FR 18618, 18619 (April 30, 1982). Furthermore, the Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals affecting clearing organizations and registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986).

The proposed rulemaking would affect individuals who serve on SRO governing boards, disciplinary committees and oversight panels. The Commission does not believe that its proposed rulemaking would have a significant economic impact on these SRO committee members. The proposed rulemaking would require these committee members to disclose to their SROs certain position information which is known or should be known to them at the time that their committees consider certain significant actions which would not be submitted to the Commission for approval. The Commission believes that this requirement would not have any significant economic impact on such members because the information which they would be required to provide should be readily available to them and because the significant actions which would give rise to this requirement should occur on an infrequent basis.

Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA, 5 U.S.C. § 605(b), that the proposed rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities: Proposed Collection; Comment Request

The Paperwork Reduction Act of 1980 (''PRA''), 44 U.S.C. 3501 *et seq.* (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted the proposed rulemaking and its associated information collection requirements to the Office of Management and Budget (''OMB''). The burden associated with the entire collection, including this proposed regulation and amendments, is as follows:

Average burden hours per response—3,546.26

Number of respondents—15,286.00

Frequency of response—On Occasion

The burden associated with the proposed regulation and amendments is as follows:

Average burden hours per response—2.00

Number of respondents—20

Frequency of response—On Occasion

Persons wishing to comment on the information that would be required by the proposed rulemaking should contact Jeff Hsu, OMB, Room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5170.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 156

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act, the Commission is proposing to amend Title 17, Chapter I of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 USC 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.3 would be proposed to be amended by adding paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) ''Oversight panel'' means any panel authorized by a self-regulatory organization to review, recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement or disciplinary responsibilities.

3. Section 1.41 would be proposed to be amended by adding paragraph (f)(10) to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(f) * * *

(10) Governing board members who abstain from voting on a temporary emergency rule pursuant to § 1.69, shall not be counted in determining whether such a rule was approved by the two-thirds vote required by this regulation.

4. Section 1.63(a)(2) would be proposed to be revised to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(2) ''Disciplinary committee'' means a committee of persons which is authorized by a self-regulatory organization to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof.

* * * * *

5. Section 1.63(a)(4) would be proposed to be removed.

6. Section 1.63(a)(5) would be proposed to be redesignated as § 1.63(a)(4).

7. Section 1.63(a)(6) would be proposed to be redesignated as § 1.63(a)(5).

8. In redesignated § 1.63(a)(5)(ii), the reference to ''subparagraphs (a)(6)(i) (A) through (C)'' would be proposed to be amended to read ''paragraphs (a)(5)(i) (A) through (C)''.

9. In redesignated § 1.63(a)(5)(iv), the reference to ''paragraphs (a)(6)(i) through (iii)'' would be proposed to be amended to read ''paragraphs (a)(5)(i) through (iii)''.

10. Section 1.63(a)(7) would be proposed to be redesignated as § 1.63(a)(6).

11. In Section 1.63(d), the reference to ''paragraph (a)(6)(i)'' would be proposed to be amended to read ''paragraph (a)(5)(i)''.

12. Section 1.69 would be proposed to be added to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) Definitions. For purposes of this section:

(1) ''Disciplinary committee'' means a committee of persons which is authorized by a self-regulatory organization to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof.

(2) ''Governing board'' means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a) (12)(A) or 17(j) of the Act, to take action for and on behalf of the self-regulatory organization with respect to a matter covered by this section.

(3) A person's ''immediate family'' means the person's spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law.

(4) ''Member's affiliated firm'' is a firm in which the member is a ''principal,'' as defined in § 3.1(a), or an employee.

(5) ''Named party in interest'' means a party who is identified as the subject of any matter being considered by a governing board, disciplinary committee or oversight panel.

(6) ''Self-regulatory organization'' means a ''self-regulatory organization'' as defined in § 1.3(ee) and includes a ''clearing organization'' as defined in § 1.3(d).

(7) ''Significant action which would not be submitted to the Commission for its prior approval'' includes, at a minimum, any of the following types of self-regulatory organization actions or rule changes which can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an ''emergency'' as defined in § 1.41(a)(4); and,

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions when such conditions are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization.

(b) Self-Regulatory Organization Rules. Each self-regulatory organization shall maintain in effect rules which have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to Section 17(j) of the Act, which require, at a minimum, that:

(1) Relationship With Named Party in Interest. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel shall abstain from such body's deliberations and voting on any matter where such member:

(i) Is the named party in interest;

(ii) Is an employer, employee or fellow employee of the named party in interest;

(iii) Is associated with the named party in interest through a ''broker association'' as defined in § 156.1;

(iv) Has any other significant, ongoing business relationship with the named party in interest, including clearing relationships, but not including relationships limited to executing futures or option contract transactions with each other; or,

(v) Is in the immediate family of the named party in interest.

(2) Financial Interest in an Action. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel shall abstain from such body's deliberations and voting on any significant action which would not be submitted to the Commission for its prior approval if the member knowingly has a direct and substantial financial interest in the result of the vote. In determining whether a member has a direct and substantial financial interest in the result of such a vote, among other things, a self-regulatory organization's rules must consider with respect to any contract or product which the self-regulatory organization reasonably expects could be affected by the action:

(i) Gross positions held in the member's personal accounts or ''controlled accounts,'' as defined in § 1.3(j);

(ii) Gross positions held in accounts in which the member has a significant financial interest;

(iii) Gross positions held in proprietary accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(iv) Gross positions held in the personal accounts or ''controlled accounts,'' as defined in § 1.3(j), of any person in the member's immediate family, unless such person is not a dependent of the member and does not reside at the member's residence;

(v) Net positions held in ''customer'' accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and,

(vi) Gross position of any customer who constitutes a significant portion of business for the member or the member's affiliated firm.

(3) Abstention Decision.

(i) Prior to the start of any self-regulatory organization's governing board, disciplinary committee or oversight panel deliberations or voting on a matter, appropriate self-regulatory organization staff shall:

(A) review the positions described in paragraph (b)(2) of this section for each member of such body based upon:

(1) The most recent large trader reports and clearing records available to the staff;

(2) Position information provided by the member to the staff pursuant to Paragraph (c) of this section; and,

(3) Any other source of position information which is readily available to the staff;

(B) Determine whether any such member is subject to any of the conditions listed in paragraphs (b)(1) or (2) of this section; and,

(C) Direct any such member to abstain from deliberations and voting on the matter.

(ii) Whenever the staff of a self-regulatory organization makes an abstention determination pursuant to paragraph (b)(3)(i) of this section, the appropriate governing board, disciplinary committee or oversight panel shall include in the minutes or records of its subsequent meeting the following information regarding any such determination:

(A) The names of all members who attended the meeting in person or who otherwise were present by electronic means;

(B) The name of any member who voluntarily recused himself from deliberations and/or voting on a matter and the reason for the recusal, if stated;

(C) The names of the individuals reviewing the positions described in paragraph (b)(2) of this section;

(D) A list referencing the position information which was reviewed for each member;

(E) The name of any member who was directed to abstain from any deliberations and voting on a matter and the reason for the abstention;

(F) A description of the procedures followed in making any determination on abstentions from deliberations and voting; and,

(G) In those instances when a committee member is permitted to deliberate but not vote on a matter pursuant to this paragraph (b)(4) of this section, a full description of the views expressed by such member during deliberations.

(4) Participation in Deliberations.

(i) A self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a matter for which he otherwise would be required to abstain under the self-regulatory organization's rules implementing the requirements of paragraph (b)(2) of this section. In making such a determination, the presiding body should consider the following factors:

(A) Whether the member has expertise, knowledge or experience in the matter under consideration which few or no other members of the presiding body have;

(B) Whether the ability of the presiding body to deliberate meaningfully would be adversely affected by the non-participation of the member; and,

(C) Whether the member's participation in deliberations is necessary for the presiding body to achieve a quorum in the matter.

(ii) Any determination to so allow a member to participate in deliberations on a matter shall be approved by each of those members of the presiding body who are present and who are non-members of the self-regulatory organization.

(c) Disclosure Requirement. Each member of a self-regulatory organization governing board, disciplinary committee or oversight panel which is to consider a matter referred to in paragraph (b)(2) of this section shall disclose to the appropriate self-regulatory organization staff prior to such consideration the position information referred to in paragraph (b)(2) of this section which is known or should be known to the member at that time. For these purposes, members shall be presumed to have knowledge of those positions referred to in paragraphs (b)(2) (i) through (iv) of this section.

(d) Violations of Self-Regulation Organization Rules. No self-regulatory organization may permit a person to engage in deliberations or voting on a matter if it would violate any rule adopted by the self-regulatory organization in compliance with paragraphs (b) (1) or (2) of this section.

(e)Liability to Other Parties. No self-regulatory organization or self-regulatory organization official, employee or member, other than the member whose position or positions are being reviewed, or delegee or agent thereof, shall be subject to liability under this section, except for liability in an action initiated by the Commission, in connection with the review required by paragraph (b)(3) and any action taken or required to be taken thereunder.

PART 156—BROKER ASSOCIATIONS

1. The authority citation for Part 156 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6j(d), 7a(b) and 12a.

2. Section 156.4 would be proposed to be added to read as follows:

§ 156.4 Disclosure of Broker Association Membership

Each contract market shall post in a location accessible to the public a list of all registered broker associations which identifies for each such association the name of each person who is a member or otherwise has a direct beneficial interest in the association. This list shall be updated at least semi-annually.

Issued in Washington, D.C. on April 29, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–10936 Filed 5–2–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 346

[Docket No. RM96–10–000]

Oil Pipeline Cost-of-Service Filing Requirements; Notice of Proposed Rulemaking

April 29, 1996.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise Part 346 of its regulations to make the cost-of-service filing requirements of that Part applicable to the Trans-Alaska Pipeline System (TAPS) carriers and carriers delivering oil directly or indirectly to TAPS. These carriers were inadvertently excluded from the streamlined procedural rules in Part 346 required by the Energy Policy Act of 1992.

DATES: Comments are due on or before June 3, 1996.

ADDRESSES: An original and 14 copies of written comments on this proposed rule must be filed in Docket No. RM96–10–000. All filings should refer to Docket No. RM96–10–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 208–2078.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2–A, 888 First Street, N.E. Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800 856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2–A, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's bulletin board system can also be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem: Dial (703) 321–3339 and logon to the FedWorld system.

- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

The Federal Energy Regulatory Commission (Commission) proposes to revise Part 346 of its regulations to make the cost-of-service filing requirements of that Part applicable to the Trans-Alaska Pipeline System (TAPS) carriers and carriers delivering oil directly or indirectly to TAPS.

I. Background

Order No. 561[1] was issued on October 22, 1993, to comply with the Energy Policy Act of 1992 (Act of 1992),[2] which required the Commission to establish a simplified and generally applicable ratemaking methodology for oil pipelines and to streamline its procedures relating to oil pipeline rates. The Act of 1992 excluded TAPS, and any pipeline delivering oil directly or indirectly to TAPS, from its provisions for ratemaking purposes. Thus, Order No. 561 stated that TAPS and the other excluded pipelines would continue to be governed by their existing rate methodologies,[3] but also would be subject to the Commission's new procedural rules. Thereafter, on October 28, 1994, as a companion to Order No. 561, the Commission issued Order No. 571, establishing in Part 346 of its regulations cost-of-service filing requirements for oil pipelines.[4] These procedural requirements include all the information necessary to support a rate filing under the Opinion No. 154–B methodology. However, the existing provisions of Part 346 do not apply to TAPS or its feeder lines.[5]

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information under the proposed rule will remain unchanged for rate filings, since what the Commission proposes to codify as the information to be provided is that which the Commission's staff routinely has requested of oil pipelines for cost-of-service rate filings in the past. The information will be collected on FERC–550, ''Oil Pipeline Rates: Tariff Filings.''[6] This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current annual reporting burden associated with this information collection requirement was described in Order No. 571 and included the burden attributable to all oil pipelines, including TAPS and its feeder lines, as follows: FERC–550: 5,350 hours, 535 responses, and 140 respondents.

Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, can be sent to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Discussion

It has always been the Commission's intent to exclude TAPS and its feeder lines only from the simplified ratemaking methodology adopted in Order No. 561, not from the streamlined procedural rules required by the Act of 1992. Thus, the Commission stated in Order No. 561:[7]

> For ratemaking purposes, TAPS and those excluded pipelines [the TAPS feeder lines] will continue to be regulated under the ratemaking standards that are currently in effect. However, it is the Commission's judgment that such exclusion [of TAPS and its feeder lines from the provisions of the Energy Policy Act of 1992] was intended to apply only to the simplified and generally applicable rate methodology, not to the procedural rules that the Act of 1992 required the Commission to consider. Otherwise, the Commission would be required to enforce one set of procedural rules for TAPS and excluded pipelines and another for all other pipelines under its jurisdiction under the ICA. This would not be consistent with Congress' intent for the Commission to streamline its procedures for oil pipelines.

Likewise, the Commission meant the procedural rules of Part 346 to apply to TAPS and its feeder lines, but Order No. 571 neglected to include them. This is the interpretation that is consistent with the mandate of the Act of 1992 that the Commission streamline its procedures in order to avoid unnecessary regulatory costs and delays, and with the Commission's explicit desire to enforce one set of procedural rules for all pipelines. However, Part 346 of the regulations governing oil pipeline filing requirements inadvertently excluded TAPS and its feeder pipelines.

[1] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, FERC Statutes & Regulations ¶ 30,985 (1993); Order on Rehearing, Order No. 561–A, FERC Statutes & Regulations ¶ 31,000 (1994); 58 FR 58778, Nov. 4, 1993.

[2] 42 U.S.C. 7172 note (West Supp. 1993).

[3] TAPS and the excluded pipelines would continue to justify their rates either in accordance with an applicable settlement methodology such as, for example, the TAPS Settlement Methodology, or under the Opinion No. 154–B cost-of-service methodology.

[4] Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, FERC Statutes & Regulations 31,006 (1994).

[5] See, Milne Point Pipeline Company, 75 FERC ¶ 61,050 (1996).

[6] FERC–550 is the designation covering oil pipeline tariff filings made to the Commission.

[7] FERC Statutes & Regulations ¶ 30,985 at 30,961.

Accordingly, the Commission proposes to amend Part 346 to apply to TAPS and its feeder lines. Thus, the TAPS carriers and the TAPS feeder lines will be required to comply with the cost-of-service filing requirements of Part 346 when they seek to establish rates under the Opinion No. 154–B methodology. These requirements are no more than a codification of the information that these carriers now must provide routinely in response to the Commission staff's requests for information to support their cost-of-service rate filings, and, thus, should not create any additional burden for carriers making cost-of-service filings. Carriers' including cost-of service supporting information with their initial filings instead of filing it at a time later in the regulatory process also will satisfy the requirement of the Act of 1992 to avoid unnecessary regulatory costs and delays.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[8] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[9] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[10] Therefore, neither an environmental impact statement nor an environmental assessment is necessary and will not be prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[11] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[12]

Pursuant to section 605(b), the Commission certifies that the proposed rules and amendments, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities.

VI. Information Collection Requirements

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by an agency.[13] The information collection requirements in this proposed rule are contained in FERC–550 ''Oil Pipeline Rates: Tariff filings'' (1902–0089).

The Commission's Office of Pipeline Regulation uses the data collected in these information requirements to investigate the rates charged by oil pipeline companies subject to its jurisdiction, to determine the reasonableness of rates, and when appropriate prescribe just and reasonable rates.

The revisions in the proposed rule will not change the reporting requirements of FERC–550. This rule therefore is not subject to OMB review. Nevertheless, the Commission is submitting a copy of the proposed rule to OMB for informational purposes. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

VII. Comment Procedures

Copies of this notice of proposed rulemaking can be obtained from the Public Reference and Files Maintenance Branch, Room 2–A, 888 First Street, N.E., Washington, D.C. 20426. Any person desiring to file comments should submit an original and fourteen (14) copies of such comments to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, not later than June 3, 1996.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's public reference room at 888 First Street, N.E., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission gives notice of its proposal to amend Part 346, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

1. The authority citation for Part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. Sections 346.1 introductory text and 346.2 introductory text are proposed to be revised as follows:

§ 346.1 Content of filing for cost-of-service rates.

A carrier that seeks to establish rates pursuant to § 342.2(a) of this chapter, or a carrier that seeks to change rates pursuant to § 342.4(a) of this chapter, or a carrier that otherwise seeks to establish or change rates by filing cost, revenue, and throughput data supporting such rates, must file:

* * * * *

§ 346.2 Materials in support of initial rates or change in rates.

A carrier that files for rates pursuant to § 342.2(a) or § 342.4(a) of this chapter, or a carrier that otherwise files to establish or change rates by filing cost, revenue, and throughput data supporting such rates, must file the following statements, schedules, and supporting workpapers. The statement, schedules, and workpapers must be based upon an appropriate test period.

* * * * *

[FR Doc. 96–11048 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Columbus, OH

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the proposal to amend the Customs Regulations pertaining to the field organization of

[8] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations (Regulations Preambles 1986–1990) ¶ 30,783 (1987).

[9] 18 CFR 380.4.

[10] *See* 18 CFR 380.4(a)(2)(ii).

[11] 5 U.S.C. 601–612.

[12] 5 U.S.C. 605(b).

[13] 5 CFR 1320.11.

Customs by extending the geographical limits of the port of Columbus, Ohio, to include Rickenbacker Airport which is currently operating as a user fee airport. The comment period is being extended another 30 days.

DATES: Comments are requested on or before May 31, 1996.

ADDRESSES: Comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 and inspected at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, (202) 927–0196.

SUPPLEMENTARY INFORMATION: A document was published in the Federal Register (61 FR 8001) on March 1, 1996, proposing to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of Columbus, Ohio, to include Rickenbacker Airport which is currently operating as a user fee airport. The document further stated that if the boundaries of the port are extended as proposed, the Customs Regulations would also be amended to remove Rickenbacker Airport's designation as a user fee airport. Customs solicited comments on the proposal and comments were due by April 30, 1996.

Customs has received a request to extend the comment period to allow interested parties to have more time to consider the proposal as the long-term economic development interests of the Greater Columbus Community make it imperative that there be full consideration of the proposal. Customs believes the request has merit. Accordingly, the period of time for the submission of comments is being extended 30 days.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address stated above.

Dated: April 30, 1996.

Marvin M. Amernick,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–11164 Filed 5–02–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR–027–FOR]

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas regulatory program (hereinafter the ''Arkansas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment was submitted at the State's own initiative and consists of revisions to and additions of regulations pertaining to remining, water replacement, subsidence damage repair/compensation, and enforcement. Arkansas also proposes to remove duplicated regulation sections for surface and underground mining permit applications pertaining to general requirements for the description of hydrology and geology, groundwater information, surface water information, alternative water supply information, and fish and wildlife resources information. The amendment is intended to incorporate the additional flexibility afforded by the revised Federal regulations, and to enhance the enforcement of the State program.

DATES: Written comments must be received by 4:00 p.m., c.d.t., June 3, 1996. If requested, a public hearing on the proposed amendment will be held on May 28, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on May 20, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Jack R. Carson, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Arkansas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone (501) 682–0744.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. Background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 21, 1980, Federal Register (45 FR 77003). Arkansas amended its program by submitting provisions that satisfied all of the conditions of the Secretary's approval of November 21, 1980. Effective January 22, 1982, OSM removed the conditions of the approval of the Arkansas permanent regulatory program. Information on the removal of the conditions can be found in the January 22, 1982, Federal Register (47 FR 3108). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Description of the Proposed Amendment

By letter dated April 2, 1996 (Administrative Record No. AR–557), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment at its own initiative. The provisions of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) that Arkansas proposes to amend are:

A. Subchapter A—General

1. ASCMRC Section 700.10(b) Termination of Jurisdiction

Arkansas proposed to add this paragraph to include provisions for termination of jurisdiction.

2. ASCMRC Section 705.5 Definitions

Arkansas proposes to amend this section by adding, alphabetically, definitions of ''drinking, domestic or residential water supply,'' ''land eligible for remining,'' ''material damage,''

''non-commercial building,'' ''occupied residential dwelling and structures related thereto,'' ''previously mined areas,'' ''replacement of water supply,'' and ''unanticipated event or condition.''

B. Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems

1. ASCMRC Section 771.12(h) Procedures

Arkansas proposes to amend this section by replacing the incorrect reference to Sections 787.11(b) and 787.12(b)(1) with a reference to Sections 787.11 and 787.12.

2. ASCMRC Section 771.25(b) Permit Fees

Arkansas proposes to amend this section by replacing the calculation of the annual administration and enforcement fee on a per affected acre basis with a flat fee of $600.00 per year through the life of the permit.

3. ASCMRC Section 778.14(c) Compliance Information

Arkansas proposes to amend this section by replacing all existing language except for the last sentence of the paragraph.

4. ASCMRC Section 778.18 Personal Injury and Property Insurance Information

Arkansas proposes to amend this section by removing the reference to Part 806 and adding a reference to Section 800.60.

5. ASCMRC Section 779.19(b) Vegetation Information

Arkansas proposes to amend this section by replacing the reference to Part 779.20 with a reference to Section 780.16.

6. ASCMRC Section 779.22 Land Use Information

Arkansas proposes to remove this section and to incorporate its provisions into Section 780.23.

7. ASCMRC Section 779.25(k) Cross-sections, Maps, and Plans

Arkansas proposes to remove and reserve this section.

8. ASCMRC Sections 780.21 and 784.14 Hydrologic Information

Arkansas proposes to amend Section 780.21 by inserting a new subparagraph (f)(3)(v). Also, through an inadvertent oversight, Section 784.14 was not updated when Section 780.21 was amended in 1988. Therefore, Arkansas proposes to amend Section 784.14 by renaming the heading, by deleting the inappropriate reference to Section 780.21(b)(3) and referencing instead Sections 780.21(e) and 780.21(f)(3)(iii) as inapplicable to underground operations, and inserting a reference to new paragraph Section 780.21(f)(3)(v). Additionally, through an apparent typographical error, the heading for Section 784.15 had been deleted making it appear that section 784.14 also references Section 780.23. Moreover, this reference incorrectly excluded Section 780.23(a)(2) from consideration for underground mining operations. Therefore, Section 784.14 is further amended by deleting the reference to Section 780.23 and placing the corrected reference under relisted Section 784.15.

9. ASCMRC Sections 780.23 and 784.15 Land Use Information

Arkansas proposes to amend Section 780.23 by replacing it in its entirety. Additionally, through an apparent typographical error, the heading for Section 784.15 had been deleted making it appear that Section 784.14 also references Section 780.23. Moreover, this reference incorrectly excluded Section 780.23(a)(2) from consideration for underground mining operations. Therefore, Arkansas proposes to relist the heading for Section 784.15, and to place the reference to Section 780.23 under this section.

10. ASCMRC Sections 780.25 and 784.16 Ponds, Impoundments, Banks, Dams and Embankments

Arkansas proposes to amend Sections 780.25 and 7847.16 by replacing the term ''Pond'' in the heading with ''Siltation Structures.'' Also, Section 780.25 is proposed to be amended by replacing the terms ''pond and sedimentation ponds'' with ''siltation structures'' in paragraphs (a) and (b), by adding the phrase ''and a detailed design plan'' to paragraph (a), by replacing the impoundment classification criteria in paragraphs (a)(2), (a)(3), and (f), by replacing the references to now-removed Sections 816.91 through 816.93 in paragraphs (a)(3) (i) and (e) with a reference to Sections 816.81 through 816.84, by replacing the existing language in paragraph (c), and by revising the referenced sections in paragraph (d) from 816.85 to 816.84.

11. ASCMRC Section 783.22 Land Use Information

Arkansas proposes to remove this section and consolidate its provisions into amended Section 783.23.

12. ASCMRC Section 784.20 Subsidence Control

Arkansas proposes to amend this section by removing all existing language and adding new provisions for presubsidence surveys and subsidence control plans.

13. ASCMRC Section 784.25(a) Return of Coal Processing Waste to Abandoned Underground Workings

Arkansas proposes to amend this subsection by revising the reference to Section 816.88 with a reference to Section 816.81(f).

14. ASCMRC Section 785.25 Lands Eligible for Remining

Arkansas proposes to add new Section 785.25 pertaining to permitting requirements for lands eligible for remining.

15. ASCMRC Section 786.5(b) Definitions

Arkansas proposes to amend this subsection by revising the introductory text; by rearranging, alphabetically, the existing definitions; and by inserting alphabetically, definitions for ''Applicant/Violator System or AVS,'' ''Federal violation notice,'' ''Ownership or control link,'' ''State violation notice,'' and ''violation notice.''

16. ASCMRC Section 786.11(c)(2) Public Notices of Filing of Permit Applications

Arkansas proposes to amend this subsection by replacing the reference to Section 783.20 with a reference to Section 780.16.

17. ASCMRC Section 786.17(c) Reveiw of Violations

Arkansas proposes to amend Section 786.17 by revising paragraph (c)(1), by adding an additional qualifying phrase to paragraph (c)(2) regarding permits which will be conditionally issued, and by adding new paragraph (c)(4) regarding an exception to the prohibitions of paragraph (b).

18. ASCMRC Section 786.19(g)–(r) Criteria for Permit Approval or Denial

Arkansas proposes to amend this section by adding new paragraphs (q) and (r) pertaining to lands eligible for remining.

19. ASCMRC Section 786.30 Improvidently Issued Permits: General Procedures

Arkansas proposes to amend this section by revising paragraphs (b) and (c), by renumbering the existing subparagraphs under (b) and (c), and by adding new paragraphs (b)(2) and (c)(2)

pertaining to when an ownership and control link may be challenged under Section 786.35.

20. ASCMRC Section 786.31 Improvidently Issued Permits: Rescission Procedures

Arkansas proposes to amend this section by replacing the reference to Section 786.30(c)(4) with 786.30(c)(1)(iv), by adding a qualifying phrase regarding the provisions of proposed Section 786.35 to paragraph (a), and by deleting the right to appeal provisions of paragraph (c) which are now incorporated in Section 786.30.

21. ASCMRC Section 786.32 Verification of Ownership or Control Application Information

Arkansas proposes to add new Section 786.32 pertaining to verification of ownership or control application information through manual data sources and automated data sources.

22. ASCMRC Section 786.33 Review of Ownership or Control Violation Information

Arkansas proposes to add new Section 786.33 pertaining to the review of violation notices and ownership or control links to determine whether the application can be approved.

23. ASCMRC Section 786.34 Procedures for Challenging Ownership or Control Links Shown in AVS

Arkansas proposes to add new Section 786.34 pertaining to procedures for challenging ownership or control links shown in the AVS.

24. ASCMRC Section 786.35 Standards for Challenging Ownership or Control Links and the Status of Violations

Arkansas proposes to add new Section 786.35 pertaining to the standards for challenging ownership or control links shown in the AVS.

25. ASCMRC Section 788.14(a)(3) Permit Renewals: Completed Applications

Arkansas proposes to amend this subsection by replacing the reference to Section 806.14 with a reference to Section 800.60.

C. Subchapter H—Small Operator Assistance

1. ASCMRC Section 795.12 Program Services and Data Requirements

Arkansas proposes to revise the provisions in this section pertaining to its small operator assistance program (SOAP) and to revise the section title from ''Program Services'' to ''Program Services and Data Requirements.'' This amended section includes the provisions of former Section 795.16 Data Requirements.

2. ASCMRC Section 795.13(a)(2) Eligibility for Assistance

Arkansas proposes to amend paragraph (a)(2) by changing the liability period and increasing the production level to 300,000 tons with respect to operator eligibility.

3. ASCMRC Section 795.16 Data Requirements

Arkansas proposes to remove this section and combine it with amended Section 795.12 Program Services and Data Requirements.

4. ASCMRC Section 795.17 Qualified Laboratories

Arkansas proposes to amend this section by revising the definition of ''qualified laboratory'' in paragraph (a)(1) and by replacing the references of Sections 795.16 (b)(1) and (b)(2) in paragraph (b)(2) with Sections 795.12 (b)(1) and (b)(2).

5. ASCMRC Section 795.19 Applicant Liability

Arkansas proposes to amend this section by raising the production level to 300,000 tons and reducing the liability period, and by making other minor changes.

D. Subchapter J—Bond Insurance Requirements for Surface Coal Mining and Reclamation Operations

1. Part 800—General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under the State Program

Arkansas proposes to amend Subchapter J by deleting all existing language from Part 800, and by removing Parts 805, 806, 807, and 808, and consolidating the provisions of these removed Parts into amended Part 800. Arkansas also proposes to change the title of Part 800 from ''General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under the State Program'' to ''Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under the State Program.''

E. Subchapter K—State Program Performance Standards

1. ASCMRC Section 816.41 Hydrologic Balance Protection

Arkansas proposes to amend this section by adding new paragraph (e) pertaining to permittees replacing a drinking, domestic or residential water supply that is adversely impacted by underground mining activities.

2. ASCMRC Section 816.46 Hydrologic Balance: Siltation Structures

Arkansas proposes to amend this section by expanding the definition of ''other treatment facility'' in paragraph (a)(3), by suspending paragraph (b)(2), and by revising paragraph (c)(2) regarding spillways.

3. ASCMRC Section 816.49 Impoundments

Arkansas proposes to amend this section by redesigning paragraphs (a)(1) through (a)(8) as paragraphs (a)(2) through (a)(9), respectively, and paragraphs (a)(9) through (a)(11) as paragraphs (a)(11) through (a)(13), respectively; by replacing the language of paragraph (a)(1) with language pertaining to impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service (SCS) Technical Release No. 60; by adding new paragraph (a)(10) pertaining to high walls; by revising newly redesignated paragraphs (a)(4), (a)(5), (a)(6)(i), and (a)(11), and existing paragraphs (c)(2) (i) and (ii) by inserting references to the SCS criteria for dam classification; and by replacing the existing language of a newly redesignated paragraph (a)(9) with language pertaining to spillways.

4. ASCMRC Section 816.81 Coal Mine Waste: General Requirements

Arkansas proposes to amend this section by replacing the introductory text in paragraph (a); by replacing existing language in paragraph (c)(2) with language pertaining to design criteria for a disposal facility; and by deleting paragraphs (c)(3) and (c)(4).

5. ASCMRC Section 816.82 Coal Processing Waste Banks: Site Inspection

Arkansas proposes to remove this section pertaining to inspections of coal processing waste banks.

6. ASCMRC Section 816.85 Coal Processing Waste Banks: Construction Requirements

Arkansas proposes to remove this section pertaining to the construction of coal processing waste banks.

7. ASCMRC Section 816.86 Coal Processing Waste: Burning

Arkansas proposes to remove this section pertaining to extinguishing coal processing waste fires.

8. ASCMRC Section 816.88 Coal Processing Waste: Return to Underground Workings

Arkansas proposes to remove this section pertaining to the return of coal processing waste to underground mine workings.

9. ASCMRC Section 816.89 Disposal of Noncoal Mine Wastes

Arkansas proposes to amend this section by removing paragraph (d) pertaining to the handling of hazardous noncoal mine waste.

10. ASCMRC Section 816.91—816.93 Coal Processing Waste: Dams and Embankments

Arkansas proposes to remove Sections 816.91, 816.92, and 816.93 and incorporate their provisions into Section 816.84. Sections 816.91, 816.92, and 816.93 pertain to obtaining State approval, site preparation, and design and construction standards, respectively, before using coal processing waste to construct dams and embankments.

11. ASCMRC Section 816.112 Revegetation, Use of Introduced Species

Arkansas proposes to remove this section pertaining to substituting introduced species for native species.

12. ASCMRC Section 816.116 Revegetation: Standards for Success

Arkansas proposes to amend this section by revising paragraph (c)(2) by deleting the precipitation qualifier and by adding new subparagraphs (c)(2)(i) and (c)(2)(ii) pertaining to success standards for lands eligible for remining, by deleting paragraph (c)(3) pertaining to an average annual precipitation criterion, and by redesignating paragraph (c)(4) as (c)(3).

13. ASCMRC Section 816.121–U Subsidence Control: General Requirements

Arkansas proposes to amend this section by combining the provisions of Sections 816.121–U General requirements, 816.124–U Surface owner protection, and 816.126–U Buffer zones into revised Section 816.121–U General requirements.

14. ASCMRC Section 816.121–U Subsidence Control: Public Notice

Arkansas proposes to remove the first sentence of the introductory paragraph and paragraphs (b) and (c) and insert language pertaining to notifying landowners of proposed underground mining operations.

15. ASCMRC Section 816.124–U and 816.126–U Subsidence Control: Surface Owner Protection and Buffer Zones, Respectively

Arkansas proposes to remove these two sections and incorporate their provisions under revised Section 816.121–U General requirements.

16. ASCMRC Section 827.12 Coal Processing Plants: Performance Standards

Arkansas proposes to replace the references to Sections 816.91 through 816.93 in paragraph (e) with Section 816.84. Arkansas also proposes to amend paragraph (g) by replacing the terms ''solid waste'' and ''any excavated materials'' with ''noncoal mine waste'' and ''excess spoil,'' and by rearranging and revising the referenced sections.

F. Subchapter L—State Program Inspection and Enforcement Procedures

1. ASCMRC Section 842.11 Inspections

Arkansas proposes to replace all existing language in paragraphs (c)(1) through (c)(4), and to add new paragraphs (d) through (f).

2. ASCMRC Section 842.14 Review of Adequacy and Completeness of Inspections

Arkansas proposes to amend this section by replacing references to specific sections with more generalized language.

G. Subchapter R—Abandoned Mine Land Reclamation

1. ASCMRC Section 874.5 Definitions

Arkansas proposes to amend this section by revising the definition of ''left or abandoned in either an unreclaimed or inadequately reclaimed condition.''

2. ASCMRC Section 874.12 Eligible Lands and Water

Arkansas proposes to amend this section by adding new paragraphs (a)(4) through (a)(8) pertaining to coal lands and water eligible for reclamation activities.

H. The proposed amendment also consists of removals of duplicative regulation sections for surface and underground mining permit applications pertaining to ASCMRC Sections 779.13 and 783.13 Description of hydrology and geology: General requirements, ASCMRC Sections 779.15 and 783.15 Groundwater information, ASCMRC Sections 779.16 and 783.16 Surface water information, ASCMRC Sections 779.17 and 783.17 Alternative water supply information, and ASCMRC Sections 779.20 and 783.20 Fish and wildlife resources information.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on May 20, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER**

INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96–11022 Filed 5–2–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 946

[VA–107–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of statutory changes contained in Virginia House Bill 706 and the implementing regulations, both of which address sudden release of accumulated water from underground coal mine voids. The amendment is intended to improve the effectiveness of the Virginia program.

DATES: Written comments must be received by 4:00 p.m., on June 3, 1996. If requested, a public hearing on the proposed amendment will be held on May 28, 1996. Requests to speak at the hearing must be received by 4:00 p.m., on May 20, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated April 17, 1996 (Administrative Record No. VA–876), Virginia submitted amendments to § 45.1–243 of the Code of Virginia contained in Virginia House Bill 706, and concerning the sudden release of accumulated water from underground coal mine voids. Virginia also submitted the proposed implementing regulations at § 480–03–19.784.14 concerning hydrologic information for reclamation and operations plans, and § 480–03–19.817.41 concerning performance standards for hydrologic balance protection.

The proposed amendments are as follows:

1. § 45.1–243 of the Code of Virginia is amended by adding a new subsection to read as follows:

B. The Director's regulations shall require that permit applicants submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of

accumulated water from underground workings.

2. § 480–03–19.784.14(g) of the Virginia regulations is amended to add the requirement that the hydrologic reclamation plan shall also include identification of the measures to be taken to prevent the sudden release of accumulated water from the underground workings.

3. § 480–03–19.817.41(I) is amended by adding new subparagraph (3) to read as follows:

(3) Except where surface entries and accesses to underground workings are located pursuant to (i)(1) of this Section, an unmined barrier of coal shall be left in place where the coal seam dips toward the land surface. The unmined barrier and associated overburden shall be designed to prevent the sudden release of water that may accumulate in the underground workings.

(I) The applicant may demonstrate the appropriate barrier width and overburden height by either:

(A) providing a site specific design, certified by a qualified registered professional engineer, which considers the overburden and barrier characteristics; or

(B) providing the greater barrier width necessary for a minimum of 100 feet of vertical overburden or for an unmined horizontal barrier calculated by the formula: W=50+H, when W is the minimum width in feet and H is the calculated hydrostatic head in feet.

(ii) Exception to the barrier requirement may be approved provided the Division finds, based upon the geologic and hydrologic conditions, an accumulation of water in the underground workings cannot reasonably be expected to occur or other measures taken by the applicant are adequate to prevent the accumulation of water.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''**DATES**'' or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on May 20, 1996. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled.

The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(c).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. According, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 1996.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–11023 Filed 5–2–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL–5468–1]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments to rule.

SUMMARY: This action proposes amendments to the national emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities promulgated in the Federal Register on September 22, 1993. The NESHAP was promulgated to minimize emissions of PCE, which has been listed by EPA as a hazardous air pollutant (HAP). The Administrator is proposing to implement a settlement agreement that the EPA has entered into regarding a small number of transfer machines.

DATES: *Comments.* Comments on the proposed amendments must be received by June 17, 1996.

Public Hearing. Persons requesting a public hearing should contact Mr. George Smith at (919) 541–1549 by May 15, 1996. If anyone requests a public hearing by May 15, 1996, a public hearing will be held in Research Triangle Park, North Carolina. Persons wishing to make oral statements at this public hearing must contact Mr. Smith by May 15, 1996 at (919) 541–1549, Emission Standards Division, U.S. EPA, MD–13, Research Triangle Park, NC 27711. Persons interested in attending the public hearing should also contact Mr. Smith for information on the exact location of the public hearing, if one is requested.

ADDRESSES: *Comments.* Comments on the proposed amendments should be submitted (in duplicate, if possible) to: The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code 6102, 401 M Street, SW, Washington, DC 20460, attention Docket Number A–95–16.

Docket. Docket Number A–95–16, containing supporting information used in developing the proposed amendments, is available for public inspection and copying between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday (except for government holidays) at The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541–1549, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities regulated by this action are dry cleaning facilities that use perchloroethylene. Regulated categories and entities include:

Category	Examples of regulated entities
Perchloroethylene dry cleaning facilities.	Perchloroethylene dry cleaning facilities that installed transfer machines between proposal and promulgation.

The above table is an exhaustive guide for readers regarding entities to be regulated by this action.

The information presented in this preamble is organized as follows:

I. Background, Summary, and Rationale for Rule Changes

National emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities were promulgated on September 22, 1993 (58 FR 49354), and amended on December 20, 1993 (58 FR 66287), as 40 CFR Part 63, subpart M. On December 20, 1993, the International Fabricare Institute (IFI), a trade association representing commercial and industrial dry cleaners nationwide, submitted a statement of issues to the U.S. Court of Appeals for the District of Columbia Circuit challenging the NESHAP. The Agency subsequently entered into a settlement agreement with IFI, notice of which was published prior to being lodged with the court (60 FR 52000, October 4, 1995).

International Fabricare Institute raised the issue of new transfer machines purchased or installed between proposal and promulgation. The IFI's concern stems from the fact that the Agency did not propose to ban new transfer machines, yet at promulgation did ban such machines. The IFI argued that dry cleaners who installed new transfer machines between proposal and promulgation did so with the understanding that the Agency had not proposed any prohibitions against this. These dry cleaners now have no recourse but to scrap these new transfer machines and replace them with new dry-to-dry machines in order to comply with the NESHAP. The IFI asserted that this is unfair, given these dry cleaners acted in accordance with the law to the best of their knowledge at the time.

At the time of proposal, the Agency believed that no new transfer machines were being sold or installed, and for this reason did not propose to ban purchase of new transfer machines. However, due to new information that the Agency received after proposal that is explained in the preamble to the final rule, the Agency banned the purchase of new transfer machines. The ban was considered reasonable because the Agency's analysis showed that emissions from clothing transfer could be eliminated by requiring dry-to-dry machines in their place. Emissions from clothing transfer account for about 25 percent of transfer machine emissions. The Agency's analysis also showed that in the typical case where a new dry-to-dry machine was installed instead of a new transfer machine, a net savings of $300 per ton of emission reductions would be realized by the dry cleaner. Hence, the Agency decided at promulgation to effectively ''ban'' new transfer machines from being introduced subsequent to promulgation, by making the emission limit for new transfer machines impossible to achieve. It was believed this decision would have no impact on dry cleaners, since no new transfer machines were being purchased or installed. It was only after promulgation that it became apparent that a few new transfer machines had been sold and installed between proposal and promulgation of the NESHAP.

The Agency agrees with IFI on this issue. Consequently, the Administrator proposes to subcategorize new transfer machines into two types: new transfer machines installed after promulgation (i.e., September 22, 1993) and new transfer machines installed between proposal (i.e., December 9, 1991) and promulgation (i.e., September 22, 1993). The requirements the Administrator is proposing today for new transfer machines installed after promulgation

do not change from what they are in the NESHAP—under no circumstances are new transfer machines installed after promulgation allowed to operate. The requirements the Administrator is proposing today for the new subcategory, new transfer machines installed between proposal and promulgation, are similar to those for existing transfer machines.

Creation of the subcategory would recognize differences in the technologies used at new sources and the achievability of the emissions limit by these technologies. As noted, at the time it set the emissions limit, the Agency failed to recognize that some owners and operators had installed transfer machines after the proposal. Transfer machine technology is fundamentally different than dry-to-dry technology. In order to stay in business, an owner or operator that had installed new transfer machines after proposal would have to purchase both a transfer machine system and a dry-to-dry system in time period between December 9, 1991 (proposal) and September 22, 1996 (final rule compliance date), while an owner and operator of a new source built after promulgation would only have to purchase one dry-to-dry system. The investment required for parties that had installed transfer machines would not be achievable for these parties, which are mostly small businesses. The proposal would not sacrifice significant emissions reductions because the number of affected machines is approximately one-tenth of one percent of all dry-cleaning machines. Today's proposal would allow for the greatest achievable emissions reductions by both those who had installed transfer machines prior to issuance of the final rule and all other new sources and would maintain the prospective prohibition on new transfer machines.

II. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP for PCE Dry Cleaning Facilities were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060–0234) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740. Today's changes to the NESHAP for PCE Dry Cleaning Facilities do not affect the information collection burden estimates made previously.

B. Executive Order 12866 Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule was classified ''non-significant'' under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

C. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a statement to accompany any proposed rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. The unfunded mandates statement under Section 202 must include: (1) a citation of the statutory authority under which the rule is proposed, (2) an assessment of the costs and benefits of the rule, including the effect of the mandate on health, safety, and the environment, and the federal resources available to defray the costs, (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry, (4) where relevant, an estimate of the effect on the national economy, and (5) a description of EPA's prior consultation with State, local, and tribal officials.

The amendments to the NESHAP that the Administrator is proposing today will not cause State, local, or tribal governments, or the private sector to incur costs that will be $100 million or more in any one year. Rather, the costs involved in this rulemaking are relatively insignificant in comparison to the $100 million threshold of the Unfunded Mandates Act. Therefore, the requirements of the Unfunded Mandates Act are not applicable to this rulemaking.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 26, 1996.

Carol M. Browner,

Administrator.

Title 40, chapter I, part 63, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

2. Section 63.320 is amended by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 63.320 Applicability.

* * * * *

(c) Each dry cleaning system that commenced construction or reconstruction before December 9, 1991 and each new transfer machine system

and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993 shall comply with §§ 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993 and shall comply with other provisions of this subpart by September 23, 1996.

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from § 63.322, § 63.323, and § 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 located in a dry cleaning facility that includes only transfer machine system(s) is exempt from § 63.322, § 63.323, and § 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

(f) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to § 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with § 63.322, § 63.323, and § 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by September 23, 1996, whichever is later.

* * * * *

3. Section 63.322 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 63.322 Standards.

(a) The owner or operator of each existing dry cleaning system and of each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 shall comply with either (a)(1) or (a)(2) of this paragraph and shall comply with (a)(3) of this paragraph if applicable.

* * * * *

(b) The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed after September 22, 1993:

* * * * *

[FR Doc. 96–11079 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 170

[OPP–250101B; FRL–5366–2]

Exceptions to Worker Protection Standard Early Entry Restrictions; Limited Contact Activities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: EPA issued a document in the Federal Register that proposed a rule change allowing early entry into pesticide-treated areas. In that proposal, EPA indicated that methyl parathion requires both oral and written notification (''double notification'') of agricultural workers when it is applied. Methyl parathion was mentioned incorrectly, as the Agency had previously determined that its acute dermal toxicity is Toxicity Category II, which does not require double notification. Moreover, a study of methyl parathion's potential for acute dermal irritation demonstrated that it is Toxicity Category IV and that it is not a skin sensitizer.

FOR FURTHER INFORMATION CONTACT: Joshua First, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 1121, Arlington, VA, 703-305-7437, e-mail: first.joshua.@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 11, 1995 (60 FR 2842) (FRL-4930-4), EPA issued a proposed rule to change allowing early entry into pesticide-treated areas under certain conditions (the proposal was subsequently finalized on May 3, 1995 (60 FR 21955) (FRL-4950-4). In the January 11th proposal, EPA described some pesticides whose labeling requires ''double notification'' when those pesticides are applied. The ''double notification'' requirement is set by the Worker Protection Standard (40 CFR part 170). EPA is hereby stating that its previous indication that methyl parathion requires ''double notification'' was incorrect. Methyl parathion does not require ''double notification.''

Lists of Subjects

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests.

Dated: April 26, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–11074 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5465–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Whiteford Sales & Service Superfund Site South Bend, Indiana.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 announces its intent to delete the Whiteford Sales & Service, Inc. (WSS) site from the National Priorities List (NPL) and requests public comment on this proposed action. As specified in Appendix B of CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), it has been determined that all appropriate Fund-financed responses at the site under CERCLA have been implemented. EPA, in consultation with the State of Indiana, has determined that the WSS site poses no significant threat to public

health or the environment and that no further clean-up action at the site is appropriate. Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such action.

DATES: Comments concerning this proposed NPL deletion may be submitted June 3, 1996.

ADDRESSES: Comments may be mailed to: Mary Tierney, U.S. EPA Region 5 (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604.

Comprehensive information on the WSS site is available at the local information repository located at the St. Joseph County Public Library, Main Branch, 122 W. Wayne St., South Bend, Indiana. Requests for copies of documents should be directed to: E. Levy, U.S. EPA Region 5 (MRI–13J), 77 W. Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT:

Mary Tierney, U.S. EPA Region 5 (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4785.
Dave Novak, U.S. EPA Region 5 (P–19J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9840.
Mary McAuliffe, U.S. EPA Region 5 (C–29A), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–6237.
Scott Hansen, IDEM, 100 N. Senate Ave., P.O. Box 6015, Indianapolis, IN 46206, (317) 233–0542.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 5 announces its intent to delete the Whiteford Sales & Service, Inc. (WSS) site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. As described in section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA will accept comments on this proposal to delete the WSS site from the NPL for 30 days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the WSS site and explains how the site meets the deletion criteria. Section V summarizes the conclusions of this notice.

II. Deletion Criteria

The 1985 amendments to the NCP established the criteria the EPA uses to delete a site from the NPL. Section 40 CFR 300.425(e) provides that sites ''may be deleted from or recategorized on the NPL where no further response is appropriate''. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate under CERCLA.

Deletion of a site from the NPL does not preclude its eligibility for subsequent Fund-financed actions if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL. Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations.

III. Deletion Procedures

Upon determination that at least one of the criteria described in section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The steps that have occurred prior to publication of this notice of intent to delete from the NPL are: (1) EPA, with the concurrence of the Indiana Department of Environmental Management (IDEM), issued a Record of Decision (ROD) which provided for No Action to be taken at the WSS site; (2) IDEM concurred with the proposed deletion decision; and (3) a local information repository was updated and a deletion docket established. This Federal Register notice, and a concurrent notice in the local newspaper in the site area, announce the initiation of a 30-day public comment period on EPA's notice of intent to delete the WSS site from the NPL. The notice has also been distributed to appropriate federal, state, and local officials, and other interested parties.

All comments from the public on EPA's intention to delete the WSS site from the NPL are requested at this time. Critical documents for evaluating EPA's decision are available in the information repository and deletion docket at the location listed on the first page of this notice. Upon completion of the public comment period, the EPA Regional Office will prepare a responsiveness summary to evaluate and address concerns which were raised during the comment period. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary. If, after reviewing public comments, EPA still determines that deletion from the NPL is appropriate for this site, a Final Notice of Deletion will be published in the Federal Register. The WSS site will then be officially deleted at the time of the subsequent NPL rulemaking.

IV. Basis for Intended Site Deletion

The following summary provides the EPA's rationale for the proposal to delete the WSS site from the NPL.

A. Site Background

The WSS site covers an area of approximately 11 acres and was formerly the location of a truck washing and leasing operation. The site is located within the city limits of South Bend, St. Joseph County, Indiana, approximately 1½ miles southwest of downtown. The area in the vicinity of the site is primarily commercial and light industrial in nature. Exit and entrance ramps for a street overpass border the site on its north and west sides, a scrap yard is located east of the site, and truck warehousing operations are located to the south. A municipal well field, currently not in operation, is located 800 feet west of the site. The WSS site now serves as a storm water retention basin for collection of run-off from the adjacent street overpass and from nearby streets.

B. Site History

Truck washing and leasing activities occurred at the WSS site from 1967 through 1983. During its operation, the facility used various solvents and detergents to clean and degrease truck frames and engines. Floor drains in the truck washing areas discharged to three unlined dry wells on the property.

In 1980, St. Joseph County purchased the property from the former owners in order to construct the street overpass now adjacent to the site. Truck washing

operations continued at the site until 1983 when overpass construction work began. Excavation activities conducted as part of the overpass construction led to the discovery of the three on-site dry wells. Sludge from the wells was found to be Resource Conservation and Recovery Act (RCRA) characteristic due to ignitability. In June 1987, under a Consent Decree signed by the former owners of the property, St. Joseph County and IDEM, approximately 210 cubic yards of soil and sludge were removed from in and around the dry wells and disposed of properly. Because a RCRA facility upgradient from the WSS site was a documented source of volatile organic compound (VOC) groundwater contamination, it was not clear what contribution the contamination on the WSS site may have had on the adjacent municipal well field. Due to the historical VOC contamination of the municipal well field west of the site, the potential for groundwater contamination at the WSS site to migrate to the well field, and the soil contamination discovered at WSS, the site was scored using the Hazard Ranking System (HRS) method, was proposed for NPL listing in June 1988, and was placed on the NPL in October 1990. A remedial investigation was conducted at the site from September to December 1990 to characterize the nature and extent of contamination and to assess potential risks to human health and the environment that the site posed.

Based on the results of the remedial investigation and the site baseline risk assessment, a Proposed Plan recommending No Action was prepared. A public meeting was held to address questions about the recommendation, and EPA responded to all public comments. None of the comments received voiced objections to the recommended action. A ROD for the WSS site was signed on September 29, 1995, which documented the decision that no further remedial action was necessary at the site due to the lack of unacceptable risks posed by the site to human health and the environment.

C. Characterization of Risk

The remedial investigation of the WSS site included the collection of seventeen (17) surface and subsurface soil samples, the installation and sampling of eleven (11) monitoring wells, and the collection of groundwater samples from one adjacent extraction well and six municipal wells. All samples were analyzed for VOCs, semi-volatile organic compounds (SVOCs), base/neutral extractable compounds, pesticides, polychlorinated biphenyls, and inorganic compounds (including metals). Sampling results were used to prepare a baseline risk assessment for the site. After results from the baseline risk assessment were carefully analyzed by an EPA toxicologist, EPA determined that the WSS site does not pose a significant current or future risk to human health or the environment. An investigation at and cleanup of the RCRA facility upgradient of the WSS site that is a documented source of VOC contamination in groundwater continues under oversight from the RCRA Program. In addition, monitoring of wells in all of the City of South Bend municipal well fields continues under the auspices of the State of Indiana to ensure that all requirements of the Safe Drinking Water Act (SDWA) are being met.

V. Conclusion

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate''. EPA, with concurrence from IDEM, has determined that this criterion for deletion has been met. Consequently, EPA is proposing deletion of the WSS site from the NPL. Documents supporting this action are available in the site deletion docket.

Dated: April 11, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–11078 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952 and 971

RIN 1991–AB25

Acquisition Regulation; Regulatory Reinvention

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) in its continuing effort to streamline and simplify the acquisition process and to meet the objectives of several Executive Orders (EO), including: EO 12861, Elimination of One-Half of Executive Branch Internal Regulations; EO 12931, Federal Procurement Reform; and EO 12866, Regulatory Planning and Review. This proposed rule revises certain regulatory material and deletes other material that has been determined to be nonregulatory and unnecessary. Specific material to be revised or deleted from the DEAR is summarized in the ''Section-by-Section Analysis'' appearing later in this document.

DATES: Written comments should be forwarded no later than July 2, 1996.

ADDRESSES: Send written comments to the attention of Kevin M. Smith, Office of Policy (HR–51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, (202) 586–8189.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order (EO) 12861, dated September 11, 1993, Elimination of One-Half of Executive Branch Internal Regulations, was issued by the President to streamline Government operations, improve productivity, and improve customer service. EO 12931, dated October 13, 1994, Federal Procurement Reform, calls for significant changes to make the Government procurement process more effective and efficient. EO 12866, dated September 30, 1993, Regulatory Planning and Review, requires agencies to review regulations to improve effectiveness and to reduce regulatory burden. This proposed rule represents DOE's third action to eliminate existing regulatory material that is unnecessary. In promulgating this rule, the Department will further the objectives of the EOs by reducing the volume of the DEAR; streamlining operations; reducing constraints, prescriptive requirements, and administrative processes; making requirements outcome oriented vs. process oriented; and, defining roles and assigning responsibilities at the lowest appropriate level within the procurement organization. This proposed rule makes three types of changes to the DEAR. Certain regulatory coverage is being revised and condensed

to simplify and streamline the acquisition process; substantive policy changes have not been made in these areas. In addition, to implement certain requirements of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, regarding the availability of protest files and agency protest reviews, two new solicitation provisions are being added. Consistent with the requirements of E.O. 12979, dated October 25, 1995, Agency Procurement Protests, language also is being added to encourage the use of alternative dispute resolution procedures in appropriate circumstances. Finally, other material that has been determined to be nonregulatory in nature is being removed from the DEAR, including informational material and internal guidance and procedures.

II. Section-by-Section Analysis

1. Part 901 is revised to simplify the language, remove informational material, and remove internal procedures addressing deviations to the regulation, ratification of unauthorized commitments, and selection of contracting officers and their representatives.

2. Subpart 905.4, addressing the internal DOE process for release of contract information, is removed.

3. Section 906.302, citing the Atomic Energy Act authority for circumstances permitting other than full and open competition, is removed.

4. Section 906.303, addressing the internal procedures for processing noncompetitive justifications, is removed.

5. Part 908, addressing required sources of supplies and services, is revised to simplify the language, remove informational material, remove internal procedures, and to move subpart 908.3, addressing the acquisition of utility services, to the new Part 941.

6. Subpart 915.5, addressing unsolicited proposals, is revised to simplify the language, remove informational material, and remove internal procedures.

7. Subpart 915.6, addressing internal source selection procedures, is removed.

8. Subsection 915.970–8, addressing weighted guidelines application considerations, is revised to remove informational material and internal guidance.

9. Section 916.405, containing recommended language for award fee contract clauses, is removed.

10. Subpart 917.70, addressing cost participation, is revised to simplify the language, remove informational material, and remove internal procedures.

11. Subpart 917.72, addressing Program Opportunity Notices for commercial demonstrations, is revised to simplify the language, remove informational material, and remove internal procedures.

12. Subpart 917.73, addressing Program Research and Development Announcements, is revised to simplify the language, remove informational material, and remove internal procedures.

13. Subpart 917.74, addressing the acquisition, use and disposal of real estate, is revised to simplify the language, remove informational material, and remove internal procedures.

14. Subpart 917.75, providing guidance for the use of multiple awards-phased acquisitions, is removed.

15. Section 922.805, providing guidance to the contracting officer for obtaining affirmative action program posters, is removed.

16. Subpart 922.70, providing guidance regarding construction laborers and mechanics, is removed.

17. Subpart 928.1, addressing the use of bonds, is revised to simplify the language, remove informational material, and remove internal procedures.

18. Section 932.102, providing information on contract financing, is revised to simplify the language, remove informational material, and remove internal procedures.

19. Subpart 932.7, providing information on contract financing, is removed.

20. Section 932.802, providing information on the use of partial assignments, is removed.

21. Section 932.805, providing internal procedures for the information to be furnished to assignees, is removed.

22. Subpart 932.9, addressing prompt payments, is revised to simplify the language, remove informational material, and remove internal procedures.

23. Section 932.7000, providing introductory information on loan guarantees, is removed.

24. Section 932.7001, providing definitions, is removed.

25. Subpart 933.1, addressing protests, is revised to simplify the language, remove informational material, remove internal procedures, add two new solicitation provisions that address protest file availability and agency protest review, and add alternative dispute resolution procedures.

26. Section 935.016, addressing research opportunity announcements, is revised to simplify the language, remove informational material, and remove internal procedures.

27. Sections 936.601, 936.602–2, 936.602–3, and 936.602–4, providing internal procedures for contracting for architect-engineer services, are removed.

28. Sections 936.603, 936.605, and 936.606, providing internal procedures for contracting for architect-engineer services, are removed.

29. Subpart 936.72, providing internal information and guidance for the acquisition of special equipment, is removed.

30. Part 941, addressing the acquisition of utility services, is added to include the coverage, as revised, that was previously contained in Part 908.

31. Subsection 942.705–1, addressing final indirect cost rate determinations, is revised to simplify the language.

32. Subsection 942.705–3, addressing negotiated rates for educational institutions, is revised to simplify the language.

33. Subsection 942.705–4, addressing negotiated rates for state and local governments, is revised to simplify the language.

34. Subsection 942.705–5, addressing negotiated rates for nonprofit organizations other than educational and state and local governments, is revised to simplify the language.

35–36. Subpart 942.70, providing internal guidance and procedures for obtaining audit support services, is removed.

37. Subsection 945.505–5, providing internal guidance for making records of plant equipment, is removed.

38. Subsection 945.505–14, providing information for the completion of Government property reports, is removed.

39. Section 952.214, addressing clauses related to sealed bidding, is removed as there is no material under that section title.

40. Section 952.215, addressing clauses related to contracting by negotiation, is removed as the prescriptions for those clauses were removed in an earlier final rule.

41. Subsection 952.233–2 is revised to change the DOE office that receives copies of protests.

42. Subsection 952.233–4 is added to include a new solicitation provision regarding the availability of protest files.

43. Subsection 952.233–5 is added to include a new solicitation provision regarding agency protest reviews.

44. Subsection 952.251–70 is amended to correct the date of the contract clause Contractor Employee Travel Discounts.

45. Part 971, providing internal procedures for the review and approval of contract actions, is removed.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971

Government procurement.

Issued in Washington, D.C., on April 24, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Part 901 is revised to read as follows:

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 901.1—Purpose, Authority, Issuance

Subpart 901.3—Agency Acquisition Regulations

Subpart 901.6—Contracting Authority and Responsibilities

Subpart 901.1—Purpose, Authority, Issuance

901.101 Purpose.

The Department of Energy Acquisition Regulation (DEAR) establishes uniform acquisition policies which implement and supplement the Federal Acquisition Regulation (FAR).

901.102 Authority.

The DEAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 486(c)), and other applicable law.

901.103 Applicability.

The FAR and DEAR apply to all DOE acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this chapter.

901.104 Issuance.

901.104–1 Publication and code arrangement.

(a) The DEAR and its subsequent changes are published in the Federal Register, cumulative form in the Code of Federal Regulations, and a separate loose-leaf edition.

(b) The DEAR is issued as Chapter 9 of Title 48 of the Code of Federal Regulations.

901.104–2 Arrangement of regulations.

(a) General. The DEAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR.

(b) Numbering. The numbering illustrations at (FAR) 48 CFR 1.104–2(b) apply to the DEAR, but the DEAR numbering will be preceded with a 9 or a 90. Material which supplements the FAR will be assigned the numbers 70 and up.

901.104–3 Copies.

Copies of the DEAR published in the Federal Register or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

901.105 OMB control numbers.

The Paperwork Reduction Act of 1980, Public Law 98–511, and the Office of Management and Budget's implementing regulations at 5 CFR Part 1320, require that reporting and record keeping requirements affecting 10 or more members of the public be cleared by that Office. The OMB control number for the collection of information under 48 CFR Chapter 9 is 1910–4100.

Subpart 901.3—Agency Acquisition Regulations

901.301–70 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulations, the DOE Property Management Regulations, and DOE Directives.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.

Contracting authority vests in the Secretary of Energy. The Secretary has delegated this authority to the Procurement Executive. The Procurement Executive has redelegated this authority to the Heads of Contracting Activities (HCA). These delegations are formal written delegations containing dollar limitations and conditions. Each HCA in turn makes formal contracting officer appointments within the contracting activity. 901.602–3 Ratification of unauthorized commitments.

(b) (2) The Procurement Executive is authorized to ratify an unauthorized commitment.

(3) The ratification authority of the Procurement Executive in paragraph (b)(2) of this section is delegated to the Head of the Contracting Activity (HCA) for individual unauthorized commitments of $25,000 or under. The ratification authority of the HCA is nondelegable.

PART 905—PUBLICIZING CONTRACT ACTIONS

905.4 [Removed]

3. Subpart 905.4 is removed.

PART 906—COMPETITION REQUIREMENTS

906.302 [Removed]

4. Section 906.302, including 906.302–70, is removed.

906.303 [Removed]

5. Section 906.303, including 906.303–1, is removed.

6. Part 908 is revised to read as follows:

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 908.8—Acquisition of Printing and Related Supplies

Sec.
908.802 Policy.

Subpart 908.11—Leasing of Motor Vehicles

908.1102 Presolicitation requirements.
908.1104 Contract clauses.
908.1170 Leasing of fuel-efficient vehicles.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.
908.7101 Motor vehicles.
908.7101–1 Consolidated acquisition of new vehicles by General Services Administration.
908.7101–3 Direct acquisition.
908.7101–4 Replacement of motor vehicles.
908.7101–5 Used vehicles.
908.7101–6 Acquisition of fuel-efficient vehicles.
908.7101–7 Government license tags.
908.7102 Aircraft.
908.7103 Office machines.
908.7104 Office furniture and furnishings.
908.7105 Filing cabinets.
908.7106 Security cabinets.
908.7107 Alcohol.
908.7108 Helium.
908.7109 Fuels and packaged petroleum products.
908.7111 Arms and ammunition.
908.7112 Materials handling equipment replacement standards.
908.7114 Wiretapping and eavesdropping equipment.
908.7115 Forms.
908.7116 Electronic data processing tape.
908.7117 Tabulating machine cards.

Subpart 908.8—Acquisition of Printing and Related Supplies

908.802 Policy.

(b) Inclusion of printing requirements (limited exceptions are set forth in paragraphs 35–2 through 35–4 of the Government Printing and Binding Regulations) in contracts for supplies and services is prohibited unless specifically approved by the Director, Office of Administrative Services, Headquarters. Contracting officers shall insert the clause at 48 CFR 952.208–70.

Subpart 908.11—Leasing of Motor Vehicles

908.1102 Presolicitation requirements.

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program.

908.1104 Contract clauses.

(e) The clause at 48 CFR 952.208–7, Tagging of Leased Vehicles, shall be inserted whenever a vehicle(s) is to be leased over 60 days, except for those vehicles exempted by (FPMR) 41 CFR 101–38.6.

908.1170 Leasing of fuel-efficient vehicles.

(a) All sedans and station wagons and certain types of light trucks, as specified by GSA, that are acquired by lease for 60 continuous days or more for official use by DOE or its authorized contractors, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 and of Executive Order 12003 and subsequent implementing regulations.

(b) Leased vehicles will meet the miles-per-gallon criteria of, and be incorporated in, the approved plan of the fiscal year in which leases are initiated, reviewed, extended, or increased in scope. Vehicle leases will specify the vehicle model type to be provided.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.

This subpart sets forth requirements and procedures for the acquisition of special items by DOE and contractors authorized to use special sources of supply to the extent indicated herein.

908.7101 Motor vehicles.

908.7101–1 Consolidated acquisition of new vehicles by General Services Administration.

(a) New vehicles shall be procured in accordance with (FPMR) 41 CFR 101 25.304, 101–26.501, and 101–38.13, and

(DOE–PMR) 41 CFR 109–25.304, 109–38.13, and 109–38.51.

908.7101–3 Direct acquisition.

Vehicles may be acquired by DOE activities directly rather than through GSA when a waiver has been granted by GSA. A copy of the activity's request to GSA for a waiver shall be forwarded to the Director, Office of Property Management, within the Headquarters procurement organization. In those cases involving general purpose vehicles where GSA refuses to grant a waiver and where it is believed that acquisition through GSA would adversely affect or otherwise impair the program, authority for direct acquisition shall be obtained from the above-mentioned Headquarters official, prior to acquisition. In the acquisition of special purpose vehicles for use by DOE and its authorized contractors, the Head of the Contracting Activity may authorize direct purchases. The purchase price for sedans and station wagons, shall not exceed any statutory limitation in effect at the time the acquisition is made. (See (DOE–PMR) 41 CFR 109–38.5102–4).

908.7101–4 Replacement of motor vehicles.

(a) The replacement of motor vehicles shall be in accordance with the replacement standards prescribed in (FPMR) 41 CFR 101–38.9 and (DOE–PMR) 41 CFR 109–38.9.

(b) The Heads of Contracting Activities may arrange to sell, as exchange sales, used motor vehicles being replaced and to apply the proceeds to the purchase of similar new vehicles. However, in the event personnel are not available to make such sales, or it is in the best interest of the DOE office, GSA may be requested to sell the used vehicles.

908.7101–5 Used vehicles.

Heads of Contracting Activities may authorize the purchase of used vehicles where justified by special circumstances; e.g., when new vehicles are in short supply, the vehicles are to be used for experimental or test purposes, or the vehicles are acquired from exchange sale. In accordance with (DOE–PMR) 41 CFR 109–38.5102, the statutory passenger vehicle allocation requirements for DOE shall apply to any purchase of used vehicles except in the case of vehicles to be used exclusively for experimental or test purposes.

908.7101–6 (Acquisition of fuel-efficient vehicles.

(a) All purchases of sedans and station wagons, and certain types of light trucks as specified by GSA, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163, and of Executive Orders 12003 and 12375 and subsequent implementing regulations.

(b) Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will be included in the acquisition plan for the miles-per-gallon criteria of the year in which GSA signs the purchase contract along with the new vehicles planned for acquisition that year.

908.7101–7 Government license tags.

(a) Government license tags shall be procured and assignments recorded by DOE offices in accordance with (FPMR) 41 CFR 101–38.303. Special license tags for security purposes shall be purchased in accordance with State and local laws, regulations, and procedures. See (DOE–PMR) 41 CFR 109–38.3 and 109–38.6 for additional guidance.

908.7102 Aircraft.

Acquisition of aircraft shall be in accordance with (DOE–PMR) 41 CFR 109–38.5205.

908.7103 Office machines.

Acquisitions of office machines by DOE offices and its authorized contractors shall be in accordance with (FPMR) 41 CFR 101–25.104, 101–25.302, 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403, and (DOE–PMR) 41 CFR 109–25.302, 109–25.302–3, and 109–25.4.

908.7104 Office furniture and furnishings.

Acquisitions of office furniture and furnishings by DOE offices shall be in accordance with (FPMR) 41 CFR 101–25.104, 101–25.302, 101–25.302–1, 101–25.302–5, 101–25.302–7, and 101–25.302–8, 101–25.404 and 101–26.505, and (DOE–PMR) 41 CFR 109–25.302, 109–25.302–1, and 109–25.350.

908.7105 Filing cabinets.

Acquisitions of filing cabinets shall be in accordance with (FPMR) 41 CFR 101–26.308 and 101–25.302–2 and (DOE–PMR) 41 CFR 109–25.302–2.

908.7106 Security cabinets.

(a) Acquisitions of security cabinets shall be in accordance with (FPMR) 41 CFR 101–26.507 and the ''prerequisites to ordering'' criteria contained in (FPMR) 41 CFR 101–25.302–2 and (DOE–PMR) 41 CFR 109–25.302–2.

(b) Fixed-price prime contractors and lower tier subcontractors may use GSA acquisition sources for security cabinets in accordance with (FPMR) 41 CFR 101–26.407 and FAR 51.

908.7107 Alcohol.

(a) To the fullest extent practicable, alcohol for use by DOE or its cost-type contractors shall be procured on a tax-free basis.

(b) ATF regulations relating to the acquisition and use of alcohol free of tax, by Government agencies, are set forth in 26 CFR 213.141 through 213.146.

(c) ATF Form 1444/1486, ''Tax Free Spirits or Specially Denatured Spirits for Use of United States,'' shall be used for acquisitions of specially denatured alcohol and ethyl alcohol. Section I of the form is the application for permission to acquire and Section II is the permit. If acquisition from more than one warehouse is desirable, separate applications must be made for withdrawal from each warehouse. When permits are no longer required, they should be forwarded to the Bureau of Alcohol, Tobacco and Firearms for cancellation. Alcohol procured by use of the ATF form referred to in this section shall be used exclusively on DOE work.

(d) The Procurement Executive has been authorized to sign and delegate to others authority to sign applications under Bureau of Alcohol, Tobacco and Firearms regulations relating to the acquisition and use of alcohol free of tax. Specific DOE personnel have been delegated authority to execute Part I of Form 1444/1486 by letters to the Director, Bureau of Alcohol, Tobacco and Firearms without power of redelegation. Only the individuals so authorized shall execute Section I of these forms.

(e) Applications on the ATF Form 1444/1486 shall be executed in duplicate by an authorized DOE official and mailed directly to the address on the application. Only one permit will be provided to each field organization. Due to the numerous locations managed by field operations offices, the exact shipping address need not be shown in block 3 of the form. Shipments, however, must be addressed to the ''Department of Energy at various locations within the United States.'' The ATF will assign the application a permit number and return it to the requestor. Distribution of certified copies shall be controlled and each holder of a certified copy recorded.

(f) A signed copy of the permit shall accompany the original purchase order issued to the plant or warehouse, where it shall be retained or returned with the shipment. Subsequent orders shall refer to the permit on file in the plant or warehouse if it was retained.

(g) When alcohol is shipped, the shipper prepares the required form as specified by Bureau of Alcohol, Tobacco

and Firearms regulations and forwards them to the consignee. Upon receipt of the receiving report covering the shipment, the officer who signed the purchase order shall execute the certificate of receipt and forward it to the appropriate Regional Director, Bureau of Alcohol, Tobacco and Firearms. The carrier transporting the alcohol shall also be given a receipt as specified by Bureau of Alcohol, Tobacco and Firearms regulations.

(h) Abandoned and forfeited alcohol which has come into the custody or control of a Federal agency may be obtained by following the procedure set forth in (FPMR) 41 CFR 101–48.1.

908.7108 Helium.

(a) Acquisitions of helium by DOE and its authorized contractors shall be in accordance with this section.

(b) The Helium Act (Public Law 86–777, as amended (50 U.S.C. 167(d)) provides that, to the extent that supplies are readily available, whether in gaseous or liquid form, DOE shall purchase all major requirements of helium from the Secretary of Interior, Bureau of Mines, or from the Bureau of Mines distribution contractors eligible to sell Bureau of Mines helium to Federal agencies and their users in accordance with 30 CFR part 602.

908.7109 Fuels and packaged petroleum products.

Acquisitions of fuel and packaged petroleum products by DOE offices shall be in accordance with (FPMR) 41 CFR 101–26.602. When contractors are authorized, consistent with 48 CFR part 951, to acquire such products from Defense sources, they shall do so in accordance with (FPMR) 41 CFR 101–26.602.

908.7111 Arms and ammunition.

(a) Acquisition of arms and ammunition readily procurable in the civilian market shall be made in accordance with regular acquisition procedures.

(b) Acquisition of arms and ammunition which are peculiar to the military services shall be made by submission of order form to the Commanding General, Headquarters, U.S. Army Material Development and Readiness Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.

908.7112 Materials handling equipment replacement standards.

Materials handling equipment shall be purchased for replacement purposes in accordance with the standards in (FPMR) 41 CFR 101–25.405 and (DOE–PMR) 41 CFR 109–25.4. The Heads of Contracting Activities are authorized to replace an item earlier than the date specified in such standards under unusual circumstances. A written justification shall be placed in the purchase file.

908.7114 Wiretapping and eavesdropping equipment.

Acquisition by DOE offices and contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited.

908.7115 Forms.

(a) DOE forms shall be obtained by DOE offices in accordance with the DOE Order 1322.2 (See current version). Cost-type contractors shall obtain DOE forms through the DOE contracting officer.

(b) Standard, optional, and certain other agency forms as listed in the GSA Supply Catalog will be obtained by DOE offices in accordance with (FPMR) 41 CFR 101–26.302.

(c) Marginally punched continuous forms shall be obtained in accordance with (FPMR) 41 CFR 101–26.703.

908.7116 Electronic data processing tape.

(a) Acquisitions of electronic data processing tape by DOE offices shall be in accordance with (FPMR) 41 CFR 101–26.508.

(b) Acquisitions of electronic data processing tape by authorized contractors shall be in accordance with (FPMR) 41 CFR 101–26.508–1. However, if adequate justification exists, the Heads of the Contracting Activities may authorize contractors to obtain their tape from other sources. When such an authorization is granted, a copy of the authorization and justification shall be retained in the contract file.

908.7117 Tabulating machine cards.

DOE offices shall acquire tabulating machine cards in accordance with (FPMR) 41 CFR 101–26.509.

PART 915—CONTRACTING BY NEGOTIATION

7. Subpart 915.5 is revised to read as follows:

Subpart 915.5—Unsolicited Proposals

Sec.
915.502 Policy.
915.503 General.
915.505 Content of unsolicited proposals.
915.506 Agency procedures.
915.507 Contracting methods.

915.502 Policy.

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique and innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:

(1) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(2) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(3) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(4) Processes unsolicited proposals in an expeditious manner and, where practicable, keep proposers advised as discrete decisions are made;

(5) Assures that each proposal is evaluated in a fair and objective manner; and,

(6) Assures that each proposal will be used only for its intended purpose and the information contained therein will not be divulged without prior permission of the proposer.

(b) Extensions of contract work resulting from unsolicited proposals shall be processed in accordance with the procedures at 48 CFR 943.170.

915.503 General.

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition herein.

915.505 Content of unsolicited proposals.

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a

request for federal assistance or participation, and shall be subject to the cost sharing provisions of 48 CFR 917.70.

915.506 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Unsolicited Proposal Coordinator, Office of Procurement and Assistance, Washington, DC 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

915.507 Contracting methods.

(d) DOE's cost participation policy, at 48 CFR 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

Subpart 915.6—[Removed]

8. Subpart 915.6 is removed.

9. Subsection 915.970–8 is revised to read as follows:

915.970–8 Weighted guidelines application considerations.

The Department has developed internal procedures to aid the contracting officer in the application of weighted guidelines and to assure a reasonable degree of uniformity across the Department.

PART 916—TYPES OF CONTRACTS

916.405 [Removed]

10. Section 916.405 is removed.

PART 917—SPECIAL CONTRACTING METHODS

11. Subpart 917.70 is revised to read as follows:

Subpart 917.70—Cost Participation

Sec.
917.7000 Scope of subpart.
917.7001 Policy.

Subpart 917.70—Cost Participation.

917.7000 Scope of subpart.

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and/or demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

917.7001 Policy.

(a) When DOE supports performer research, development, and/or demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided on a case-by-case basis.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations of technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

12. Subpart 917.72 is revised to read as follows:

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

Sec.
917.7200 Scope of subpart.
917.7201 Policy.
917.7201–1 General.

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.

(a) This subpart discusses the policy for the use of a program opportunity notice solicitation approach to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) This subpart applies to demonstrations performed by individuals, educational institutions, other commercial or industrial organizations, or other private entities, or by public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrations of technological advances, field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

917.7201 Policy.

917.7201–1 General.

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations of various forms of non-nuclear energy and technology utilization.

(b) Each program opportunity notice shall as a minimum describe: the goal of the intended demonstration effort; the time schedule for award; evaluation criteria; program policy factors; the amount of cost detail required; and proposal submission information. Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are

essentially beyond their control will affect the selection process.

13. Subpart 917.73 is revised to read as follows:

Subpart 917.73—Program Research and Development Announcements

Subpart 917.73—Program Research and Development Announcements

917.7300 Scope of subpart.

(a) This subpart discusses the policy for the use of a program research and development announcement (PRDA) solicitation approach to obtain and select proposals from the private sector for the conduct of research, development, and related activities in the energy field.

917.7301 Policy

917.7301–1 General

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

(c) The PRDA is to be used only where:

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed;

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

(2) Consistent with paragraph (c)(1) of this section, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(3) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in paragraph (c)(1) of this section.

(d) Each PRDA shall as a minimum describe: the area(s) of program interest; time schedule for award; proposal submittal information; evaluation criteria; and program policy factors. The PRDA should clearly emphasize to proposers that program policy factors are essentially beyond their control and will affect the selection process. The PRDA should also state that DOE reserves the right to select for award or support any, all, or none of the proposals received in response to an announcement.

14. Subpart 917.74 is revised to read as follows:

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7401 General.

Special circumstances and situations may arise under cost-type contracts when, in the performance of their contract or subcontract, the performer shall be required, or otherwise find it necessary, to acquire real estate or interests therein by:

(a) Purchase, on DOE's behalf or in its own name, with title eventually vesting in the Government.

(b) Lease, and DOE assumes liability for, or otherwise will pay for the obligation under the lease.

(c) Acquisition of temporary interest through easement, license or permit, and DOE funds the cost of the temporary interest.

917.7402 Policy.

It is the policy of the Department of Energy that when the real estate acquisitions are made, the following policies and procedures shall be applied to such acquisitions:

(a) Real estate acquisitions shall be mission essential; effectively, economically, and efficiently managed and utilized; and disposed of promptly, when not needed;

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition method to be used, site investigation reports, site recommended for selection, and property appraisal reports; and

(c) Acquisition by lease, in addition to the requirements in paragraphs (a) and (b) of this section:

(1) Shall not exceed a one-year term if funded by one-year appropriations.

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by the Department.

(3) Shall contain an appropriate cancellation clause which limits the Government's obligation to no more than the amount of rent to the earliest cancellation date plus a reasonable cancellation payment.

(4) Shall be consistent with Government laws and regulations applicable to real estate management.

917.7403 Application.

The clause at 48 CFR 952.217–70 shall be included in contracts or modifications where contractor acquisitions are expected to be made.

917.75 [Removed]

15. Subpart 917.75 is removed.

922.805 [Removed]

16. Section 922.805 is removed.

922.70 [Removed]

17. Subpart 922.70 is removed.

PART 928—BONDS AND INSURANCE

18. Subpart 928.1 is revised to read as follows:

Subpart 928.1—Bonds

Subpart 928.1—Bonds

928.101–1 Policy on use.

(a) In addition to the restriction on use of bid guarantees in FAR 28.101–1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

928.103–3 Payment bonds.

(a) A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions.

928.103–70 Review of performance and payment bonds for other than construction.

A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

PART 932—CONTRACT FINANCING

19. Section 932.102 is revised to read as follows:

932.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

932.7 [Removed]

20. Subpart 932.7 is removed.

932.802 [Removed]

21. Section 932.802 is removed.

932.805 [Removed]

22. Section 932.805 is removed.

23. Subpart 932.9 is revised to read as follows:

Subpart 932.9—Prompt Payment

Sec.
932.970 Implementing DOE policies and procedures.

Subpart 932.9—Prompt Payment

932.970 Implementing DOE policies and procedures.

(a) *Invoice payments.* (1) *Contract settlement date.* For purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods.* Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract financing payments.* Contracting officers may specify payment due dates that are less than the standard 30 days when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized.

932.7000 [Removed]

24. Section 932.7000 is removed.

932.7001 [Removed]

25. Section 932.7001 is removed.

PART 933—PROTESTS, DISPUTES AND APPEALS

26. Subpart 933.1 is revised to read as follows:

Subpart 933.1—Protests

Sec.
933.103 Protests to the agency.
933.104 Protests to GAO.
933.105 Protests to GSBCA.
933.106 Solicitation provisions.

Subpart 933.1—Protests

933.103 Protests to the agency.

(f) If FAR 33.103(f) requires that award be withheld or performance be suspended or the awarded contract be terminated pending resolution of an agency protest, authority to award and/or continue performance of the protested contract may be requested by the Head of the Contracting Activity (HCA), concurred in by counsel, and approved by the Procurement Executive.

(i)(1) Protests filed with the contracting officer before or after award shall be decided by the Head of the Contracting Activity except for the following cases, which shall be decided by the Procurement Executive:

(i) The protester requests that the protest be decided by the Procurement Executive.

(ii) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(iii) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on DOE acquisition policy.

(2) Upon receipt of a protest requesting a decision by the Procurement Executive, the contracting activity shall immediately provide a copy of the protest to the Office of Clearance and Support.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral. Upon receipt of a protest requesting a decision at the Headquarters level, the Office of Clearance and Support will explore with the protester whether the use of ADR techniques would be appropriate to resolve the protest. Both parties must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iii). In the case of a protest filed at the Headquarters level, the report shall be forwarded to the Office of Clearance and Support within 21 calendar days of being notified of such a protest with a proposed response to the protest. The Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (d)(2) of this section) or an HCA (for protests

at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

933.104 Protests to GAO.

(a)(2) The contracting officer shall provide the notice of protest.

(b) *Protests before award.* (1) When the Department has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the Head of the Contracting Activity in accordance with FAR 33.104(b). Before the Head of the Contracting Activity authorizes the award, the required finding shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO.

(c) *Protests after award.* Before the Head of the Contracting Activity authorizes the award, the finding required by FAR 33.104(c)(2) shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive.

(g) *Notice to GAO.* (1) The report to the GAO regarding a decision not to comply with the GAO's recommendation, discussed at FAR 33.104(f), shall be provided by the HCA making the award, after approval of the Procurement Executive. If a DOE-wide policy issue is involved, the report shall be provided by the Procurement Executive.

(2) It is the policy of the Department to comply promptly with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) The GAO does not have jurisdiction to consider subcontractor protests.

933.105 Protests to GSBCA.

(a)(1)(i) The GSBCA does not have jurisdiction to consider subcontractor protests.

(d)(2) The determinations and findings required by FAR 33.105(d)(2) shall be executed by the HCA.

(4) If the GSBCA suspends the procurement authority to acquire any goods or services not previously delivered and accepted under an awarded contract, the contracting officer shall invoke the clause at FAR 52.233–3, ''Protest After Award,'' to cause the contractor to cease performance and to suspend related activities that may result in additional obligations being incurred by the Government.

933.106 Solicitation provisions.

(a) The contracting officer shall supplement the provision at FAR 52.233–2, Service of Protest, in solicitations for other than simplified acquisitions by adding the provision at 48 CFR 952.233–2.

(b) The contracting officer shall include the provision at 48 CFR 952.233–4 in solicitations for purchases above the simplified acquisition threshold.

(c) The contracting officer shall include the provision at 48 CFR 952.233–5 in solicitations for purchases above the simplified acquisition threshold.

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

27. Subsections 935.016–3 through 935.016–7 and 935.016–9 are removed, and section 935.016 and subsections 935.016–1, 935.016–2 and 935.016–8 are revised to read as follows:

935.016 Research opportunity announcements.

935.016–1 Scope.

(a) FAR 35.016 sets forth the policies and procedures for contracting for research through the use of broad agency announcements as authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and Federal Acquisition Regulation (FAR) 6.102(d)(2). Within DOE, broad agency announcements, will be designated as Research Opportunity Announcements (ROAs).

(b) Research Opportunity Announcements are a form of competitive solicitation under which DOE's broad mission and program-level research objectives are defined; proposals which offer meritorious approaches to those objectives are requested from all offerors capable of satisfying the Government's needs; those proposals are evaluated by scientific or peer review against stated specific evaluation criteria; and selection of proposals for possible contract award is based upon that evaluation, the importance of the research to the program objectives, and funds availability.

935.016–2 Applicability.

(a) This section applies to all DOE Headquarters and field program organizations which, by virtue of their statutorily mandated mission or other such authority as may exist, support energy or energy-related research activities through contractual relationships.

(1) The ROA may be used as a competitive solicitation procedure through which DOE acquires basic and applied research in support of its broad mission and program-level research objectives, and these objectives may be best achieved through relationships where contractors pursue diverse and dissimilar solutions and approaches to scientific and technological areas related to DOE's missions and programs.

(2) The ROA shall not be used as a solicitation method when one or more of the following conditions exist:

(i) In accordance with the Federal Grant and Cooperative Agreement Act, Public Law 97–258, the principal purpose of the relationship will be assistance;

(ii) The purpose of the research is to accelerate the demonstration of the technical, operational, economic, or commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components that would appropriately be acquired by Program Opportunity Notices (PONs) in accordance with 48 CFR 917.72;

(iii) The research is required in support of a specific project area within an energy program which appropriately would be acquired by Program Research and Development Announcements (PRDAs) in accordance with 48 CFR 917.73;

(iv) The research requirements can be sufficiently defined to allow the use of contracting by negotiation in accordance with FAR part 15;

(v) The purpose of the research is the acquisition of goods and services related to the development of a specific system or hardware acquisition; or,

(vi) Any funds to be obligated to a resulting contract will be used to conduct or support a conference or training activity.

(b) The following limitations are applicable to the use of ROAs:

(1) The use of broad agency announcements for the acquisition of that part of development not related to the development of a specific system or hardware is authorized by FAR 35.016(a). Notwithstanding that authorization, ROAs shall be used within DOE only to acquire basic and applied research.

(2) Proposals shall not be solicited from, and contracts shall not be awarded to, any specific entity which operates a Government-owned or -controlled research, development, special production, or testing establishment, such as DOE's management and operating contractor

facilities, Federally Funded Research and Development Centers chartered by other agencies, or other such entities. This limitation shall not be used to preclude the parent organization of the entity operating the Government-owned or -controlled facility, its subsidiaries, other divisions, or other related business affiliates from proposing, or receiving awards, under DOE's ROA solicitations, provided that any proposed resources (personnel, facilities, and other resources) used in the management and operation of the Government-owned or -controlled facility have been approved for use in the ROA effort by the sponsoring agency.

935.016–8 Selection of proposals.

(a) After considering the evaluation findings, the importance of the proposed research to the program objectives, and funds availability, the Selection Official shall determine whether a specific proposal warrants selection for negotiation and award of a contract. The decision of the Selection Official shall be documented in writing and shall address, as appropriate, such issues as:

(1) The scientific and technical merit of the proposal in relation to the ROA evaluation criteria;

(2) The qualifications, capabilities, and experience of the proposed personnel; technical approach; facilities; and where applicable, cost participation by the offeror (or any combination of the above);

(3) The importance of the proposed research to the program objectives;

(4) Which areas of the proposal, whether in whole or in part, have been selected for funding, and the amount of that funding; and,

(5) Assurances that any other requirements which are imposed by statute, regulation, or internal directives relating to the specific research activities and which are properly the responsibility of the program office have been satisfied.

(b) Absent extenuating circumstances, selection decisions regarding any individual proposal should be made within six (6) months after receipt of the proposal. Proposals which have been evaluated may be accumulated to allow for a consolidated selection decision so long as not more than six (6) months have passed since the receipt of any of the proposals so accumulated.

(c) The cognizant DOE program official shall notify successful and unsuccessful offerors of any selection/non-selection decisions. These notices shall be made in writing promptly after the decision is made, and shall, at a minimum, state in general terms, the basis for the determination.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.601 through 936.602–4 [Removed]

28. Sections 936.601, 936.602–2, 936.602–3, and 936.602–4 are removed.

936.603 through 936.606 [Removed]

29. Sections 936.603, 936.605, and 936.606 are removed.

936.72 [Removed]

30. Subpart 936.72 is removed.

31. Part 941 is added at the end of Subchapter F as follows:

PART 941—ACQUISITION OF UTILITY SERVICES

Subpart 941.2—Acquiring Utility Services.

Sec.
941.201–70 DOE Directives.
941.201–71 Use of subcontracts.

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 941.2—Acquiring Utility Services

941.201–70 DOE Directives.

Utility services (defined at FAR 41.101) shall be acquired in accordance with FAR part 41 and DOE Directives in subseries 4540 (Public Services).

941.201–71 Use of subcontracts.

Utility services for the furnishing of electricity, gas (natural or manufactured), steam, water and/or sewerage at facilities owned or leased by DOE shall not be acquired under a subcontract arrangement, except as provided for at 48 CFR 970.0803 or if the prime contract is with a utility company.

PART 942—CONTRACT ADMINISTRATION

32. Subsection 942.705–1 is revised to read as follows:

942.705–1 Contracting officer determination procedure.

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A list of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b)(1) Pursuant to FAR 52.216–7, Allowable Cost and Payment, contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the cognizant contracting officer responsible for negotiating their final rates. The DOE negotiating official shall request all needed audit service in accordance with internal procedures.

33. Subsection 942.705–3 is revised to read as follows:

942.705–3 Educational institutions.

(a)(2) The negotiated rates established for the institutions cited in OMB circular No. A–88 are distributed to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor by the Office of Policy, within the Headquarters procurement organization.

34. Subsection 942.705–4 is revised to read as follows:

942.705–4 State and local governments.

A list of cognizant agencies for State/local government organizations is periodically published in the Federal Register by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities is distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

35. Subsection 942.705–5 is revised to read as follows:

942.705–5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A–122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus federal financial assistance dollars) will be designated as the cognizant agency. There is no published list of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

942.70 [Removed]

36.37. Subpart 942.70 is removed.

PART 945—GOVERNMENT PROPERTY

945.505–5 [Removed]

38. Subsection 945.505–5 is removed.

945.505–14 [Removed]

39. Subsection 945.505–14 is removed.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.214 [Removed]

40. Section 952.214 is removed.

952.215 [Removed]

41. Section 952.215 and subsections 952.215–22 and 952.215–23 are removed.

42. Subsection 952.233–2 is revised to read as follows:

952.233–2 Service of protest.

As prescribed in 48 CFR 933.106(a), add the following to the end of the clause at FAR 52.233–2:

(c) Another copy of a protest filed with the General Accounting Office or the General Services Administration Board of Contract Appeals shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC–61), 1000 Independence Avenue, SW., Washington, DC 20585, Fax: (202) 586–4546.

43. Subsection 952.233–4 is added to read as follows:

952.233–4 Notice of protest file availability.

As prescribed in 933.106(b), insert the following provision:

NOTICE OF PROTEST FILE AVAILABILITY (XXX)

(a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Pub.L. 103–355. Such request must be in writing and addressed to the contracting officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

44. Subsection 952.233–5 is added to read as follows:

952.233–5 Agency protest review.

As prescribed in 48 CFR 933.106(c), insert the following provision:

AGENCY PROTEST REVIEW (XXX)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the contracting officer prior to filing a protest.

952.251–70 [Amended]

45. Subsection 952.251–70 is amended by revising the date of the clause to read ''(June 1995)''.

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS [REMOVED]

46. Part 971 is removed.

[FR Doc. 96–10757 Filed 5–2–96; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1312

[Ex Parte No. MC–212]

Review of Motor Tariff Regulations-1993

AGENCY: Surface Transportation Board (Board).[1]

ACTION: Proposed rule; termination of proceeding.

SUMMARY: The Board is terminating this proceeding in which modifications to motor carrier tariff filing requirements were being considered, because intervening legislation has made consideration of those modifications unnecessary.

DATES: This action is made on May 3, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Martin, (202) 927–6033; [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published at 58 FR 14198 (March 16, 1993), the ICC instituted a proceeding to seek public comment on whether certain motor carrier tariff filing requirements should be modified. The proceeding was initiated in response to a Congressional directive that the ICC increase its motor carrier tariff oversight.[2]

In recent legislation,[3] Congress has repealed the tariff filing requirements for most motor common carriers of property, and voided such tariffs. Now, the only rates that motor carriers must publish and file in tariffs are those relating to joint motor-water movements in the noncontiguous domestic trade. Because carriers are no longer required to file the tariffs that precipitated the notice of proposed rulemaking, we are terminating this proceeding.

Authority: 49 U.S.C. 10321.

Decided: April 17, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11089 Filed 5–2–96; 8:45 am]
BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Board. Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. Section 204(b)(3) provides that, ''[i]n the case of a proceeding under a provision of law repeal[ed], and not reenacted, by this Act such proceeding shall be terminated.'' Although the motor carrier tariff filing provisions were sharply curtailed in the ICCTA and in prior legislation, they were not entirely repealed. Therefore, it is not pursuant to the automatic termination provisions of section 204(b)(3) of ICCTA that this pending proceeding is being terminated.

[2] Senate Report No. 102–351, dated July 30, 1992, accompanying the U.S. Department of Transportation and Related Agencies Appropriations Bill, 1993.

[3] The Trucking Industry Regulatory Reform Act of 1994, Pub. L. No. 103–311, 108 Stat. 1683, enacted August 26, 1994, and ICCTA.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 673

[I.D. 042496B]

RIN 0648–AF81

Scallop Fishery off Alaska; Implementation of Federal Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for the Scallop Fishery off Alaska for Secretarial review. Amendment 1 would establish a Federal management regime for the scallop fishery in Federal waters off Alaska. Comments from the public are requested.

DATES: Comments on Amendment 1 must be submitted on or before June 28, 1996.

ADDRESSES: Comments on Amendment 1 should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 1 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for the amendment are available from the Council, 605 West Fourth Avenue, Anchorage, AK 99501-2252; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

The management measures proposed under Amendment 1 include: (1) Gear and efficiency restrictions, (2) scallop registration areas and districts, (3) procedures for specifying total allowable catch and crab bycatch limits, (4) time and area closures, (5) inseason management authority, (6) fishing seasons, and (7) observer coverage requirements.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. A proposed rule to implement Amendment 1 has been submitted for Secretarial review and approval. The proposed rule to implement this amendment is scheduled to be published within 15 days of this document.

Dated: April 29, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–10993 Filed 4–29–96; 4:44 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 87
Friday, May 3, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA–96–06]

Request for Comments on a Compelling Public Interest for the Northeast Interstate Dairy Compact

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: The 1996 Federal Agricultural Improvement Reform Act provides that the Secretary of Agriculture may grant authority to implement the Northeast Interstate Dairy Compact (the Compact) based upon a finding of a compelling public interest in the Compact region. The Secretary is asking all interested parties to submit written comments regarding the Compact and the existence of a compelling public interest in the Compact region.

DATES: Comments are due no later than June 3, 1996.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 720–6274.

SUPPLEMENTARY INFORMATION: Section 147 of the 1996 Federal Agricultural Improvement Reform (FAIR) Act (Pub. L. 104–127) establishes Congressional consent for the Northeast Interstate Dairy Compact (the Compact) entered into by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont subject to several conditions. The Act provides that ''Based upon a finding by the Secretary of a compelling public interest in the Compact region, the Secretary may grant the States that have ratified the Northeast Interstate Dairy Compact, as of the date of enactment of this title, the authority to implement the Northeast Interstate Dairy Compact.'' The Secretary is requesting that all interested parties submit written comments regarding the existence of a compelling public interest in the Compact region.

All persons who desire to submit written data, views or arguments regarding whether a compelling public interest exists in the Compact region should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after publication of this notice in the Federal Register. All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours.

Dated: April 30, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–11169 Filed 5–02–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 96–024–1]

Cornell University and University of Hawaii; Receipt of Petition for Determination of Nonregulated Status for Papaya Lines Genetically Engineered for Virus Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Cornell University and the University of Hawaii seeking a determination of nonregulated status for papaya lines designated as 55–1 and 63–1 that have been genetically engineered for virus resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these papaya lines present a plant pest risk.

DATES: Written comments must be received on or before July 2, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–024–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–024–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Reding, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On February 20, 1996, APHIS received a petition (APHIS Petition No. 96–051–01p) from Cornell University, Geneva, NY, and the University of Hawaii, Honolulu, HI (Cornell/Hawaii), requesting a determination of

nonregulated status under 7 CFR part 340 for papaya lines designated as 55–1 and 63–1 that have been genetically engineered to contain genes that confer virus resistance. The Cornell/Hawaii petition states that papaya lines 55–1 and 63–1 should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, papaya (*Carica papaya*) lines 55–1 and 63–1 have been genetically engineered to express the coat protein gene of papaya ringspot virus (PRV), strain HA5–1, which confers resistance to PRV. Both the subject papaya lines also contain the selectable marker gene *nptII*, and line 55–1 contains the *gus* selectable marker gene, in addition. Expression of the added genes is controlled by the untranslated 3′ region of the nopaline synthase gene from *Agrobacterium tumefaciens* and the 35S promoter and 35S terminator from the plant pathogen cauliflower mosaic virus (CAMV). In developing lines 55–1 and 63–1, the microprojectile process was used to transfer the introduced gene sequences into the gynodioecious cultivar Sunset. The Sunset cultivar is of commercial importance in Hawaii, where PRV is a serious plant pest of papaya.

The subject papaya lines have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from the plant pathogens mentioned above. The subject papaya lines have been evaluated in field trials conducted under APHIS permits. In the process of reviewing the applications for field trials of lines 55–1 and 63–1, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The Food and Drug Administration (FDA) published a statement of policy on foods derived from new plant varieties in the Federal Register on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the Federal Register announcing the regulatory status of the Cornell/Hawaii papaya lines 55–1 and 63–1 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa-150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 29th day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–11016 Filed 5–2–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Little River—Demonstration of Ecosystem Management Options (DEMO)—Timber Sale, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for a proposal to harvest timber in the Little River DEMO Planning Area. This proposal will implement the Demonstration of Ecosystem Management Options Study Plan. The EIS will document the environmental analyses and effects of a range of alternatives, including a no-action alternative. This proposal is in accordance with direction set forth in the 1990 Umpqua National Forest Land and Resource Management Plan, as amended, which provides for timber management within applicable standards, guidelines, and management prescriptions and the 1988 Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and analysis of this proposal must be received by June 1, 1996.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Ned Davis, District Ranger, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon 97443.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Barbara Fontaine, Resource Planning Assistant, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon 97443.

SUPPLEMENTARY INFORMATION: The proposed timber sale will partial harvest an estimated 160 acres producing 5.0 million board feet of timber and will construct several helicopter landing sites. Logging systems will be helicopter based. Silvicultural prescriptions will follow those prescribed in the DEMO Study Plan and will consist of several levels of green tree retention (15 percent, 40 percent, and 75 percent), with green trees left in aggregates or dispersed across the landscape.

The Little River DEMO Planning Area encompasses portions of the Emile Creek and the Upper Little River area located in the Little River Watershed, approximately 30 air-miles East of Roseburg, Oregon. The Emile area encompasses 8,718 acres north of Little River Road and the main-stem Little River. The Upper Little River area encompasses 10,408 acres and includes the main-stem and headwaters of Little River.

To date, the preliminary issues identified relate to the effects on the following: old-growth structure in terms

of its value to society; interior forest habitat; late-seral species; Threatened, Endangered, and Sensitive species, and survey and manage species; water quality; aquatic habitat; current and future recreational opportunities; archaeological sites from landing construction and road reconstruction; and introduction and dispersal of noxious weeds and aggressive non-native species.

The 1990 Umpqua National Forest Land and Resource Management Plan, as amended, allocates the Little River Watershed into an Adaptive Management Area (AMA). The Forest Plan's overall objective for AMA's is to learn how to manage on an ecosystem basis in terms of both technical and social challenges, and in a manner consistent with applicable laws. For Little River specifically, the emphasis is placed on ''development and testing of approaches to integration of intensive timber production with restoration and maintenance of high quality riparian habitat ''.

Public participation has consisted of open houses, field trips, and scoping conducted during the environmental assessment process. Numerous comments have been received and have been incorporated and reflect in the issues described above. Additional public comments will be received until June 1, 1996. The information collected will be used in preparation of the draft EIS. The scoping process includes the following:

1. Identification of issues.
2. Identification of key issues.
3. Elimination of insignificant issues, issues which have been covered by a relevant previous environmental process, and issues that could be successfully mitigated.
4. Exploration of additional alternatives based on the key issues identified during the scoping process.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November, 1996. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a Notice of Availability of the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the Federal Register. It is very important that those interested in the management of the Umpqua National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement.

The final EIS is scheduled to be completed by February, 1997. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS, as well as applicable laws, regulations, and policies considered in making the decision regarding this proposal. The lead agency is the Forest Service. Don Ostby, Forest Supervisor, Umpqua National Forest, is the responsible official. As the responsible official, he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR Part 217).

Dated: April 25, 1996.

Don Ostby,

Forest Supervisor.

[FR Doc. 96–11029 Filed 5–2–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Dawn D. Wolfgang, Program Support and Regulatory Analysis Group, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1522. Telephone: (202) 720–0812. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk to the Government. RUS Form 369 allows the borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's systems. RUS electric utility borrowers complete this form to request RUS approval in order to sell capital assets with a fair market value is 10 percent of the borrower's net utility plant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 15.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis Group, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis Group, Rural Utilities Service, U.S. Department of Agriculture, AG Box 1522, 14th & Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record:

Dated: April 29, 1996.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 96–11017 Filed 5–2–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041996A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 999 (P5I)

SUMMARY: Notice is hereby given that Dr. Donald B. Siniff, University of Minnesota, 1987 Upper Buford Circle, St. Paul, MN 55108, has been issued a permit to ''take'' by Level A harassment, Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Protected Species Program Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On January 30, 1996, notice was published in the Federal Register (61 FR 3002) that the above-named applicant had submitted a request for a scientific research permit to ''take'' by Level A harassment (i.e., capture, restrain, chemically sedate, instrument, release, and recapture for instrument removal) up to 20 adult male, and up to 10 adult female Hawaiian monk seals (*Monachus schauinslandi*) from the population at French Frigate Shoals, over an 18-month period. Up to five additional animals (regardless of gender) were also requested to be taken by Level A harassment in the event that attachment procedures must be prematurely terminated. The objective of the research is to investigate Hawaiian monk seal movements and foraging patterns using satellite-linked time-depth recorders to characterize habitat use. Authorization for the taking of adult males has been granted, with authorization for the taking of adult females contingent upon future review by both the National Marine Fisheries Service and the Hawaiian Monk Seal Recovery Team. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 26, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–10994 Filed 5–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 041996C]

Marine Mammals; Scientific Research Permit No. 1000 (P66K)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Alaska Department of Fish and Game, Division of Wildlife Conservation, P.O. Box 3–2000, Juneau, AK 99802, has been issued a permit to take up to 3000 harbor seals (*Phoca vitulina*) and up to 600 spotted seals (*Phoca largha*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On March 22, 1996, notice was published in the Federal Register (61 FR 11809) that a request for a scientific research permit to take harbor seals and spotted seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: April 24, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–10995 Filed 5–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 041996B]

Marine Mammals; Permit No. 838 (P535)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that Stephen Insley, Smithsonian Institution, National Zoological Park, Washington, DC 20008, has requested a modification to permit No. 838.

DATES: Written comments must be received on or before June 3, 1996.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 838, issued on May 17, 1993 (58 FR 29810) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

Permit no. 838 authorizes the permit holder to capture, tag, and play back vocalizations to northern fur seals on St. Paul Island, Alaska during June-August for a period of four years. The permit holder requests authorization to add tissue sampling during 1996.

Dated: April 22, 1996.

Ann Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 96–11233 Filed 5–2–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 3, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Disposal Support Services, Defense Reutilization and Marketing Office (DRMO), Alameda, California, NPA: Pacific Coast Community Services, Alameda, California

Operation of Self Service Supply Store, Ellsworth Air Force Base, South Dakota, NPA: BH Services, Inc., Rapid City, South Dakota

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–11041 Filed 5–02–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 3, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 21, 1995, March 1 and 8, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 37631, 61 F.R. 8045 and 9439) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Seat, Vehicular
2540–00–591–1108

Services

Cutting and Assembly of FTESFB System for F–15 Robins Air Force Base, Georgia
Mailroom Operation, Department of Energy, for the following locations:
Forrestal Building 1000 Independence Avenue SW., Washington, DC
Germantown Building, 19901 Germantown Road, Germantown, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–11042 Filed 5–2–96; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

Meeting

TIME AND DATE: 9 a.m. to 12:30 p.m., May 16, 1996.

PLACE: Fifth Floor Theater, National Archives and Records Administration, 7th Street and Pennsylvania Avenue, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: As part of its responsibility under Pub. L. 103–236 to make ''comprehensive proposals for reform'' designed ''to reduce the volume of information classified and thereby to strengthen the protection of legitimately classified information,'' the Commission will convene a public roundtable to address the current state of public access to government information, in particular national security information, and receive suggestions for proposed reforms. Public participation at the meeting is encouraged. The Commission also welcomes written submissions from the public on the issues to be discussed at the meeting. Due to limited room capacity, the Commission requests all persons interested in attending the public roundtable to pre-register by phone at (202) 776–8739 or by fax at (202) 776–8773.

CONTACT PERSON FOR MORE INFORMATION: Pauline Treviso, Commission on Protecting and Reducing Government Secrecy. The phone number is (202) 776–8739; the fax is (202) 776–8773.

Dated: April 30, 1996.

Eric R. Biel,

Staff Director, Commission on Protecting and Reducing Government Secrecy.

[FR Doc. 96–11086 Filed 5–2–96; 8:45 am]

BILLING CODE 6820–ER–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information School Board of Visitors Meeting

AGENCY: Department of Defense, Office of the Assistant Secretary of Defense for Public Affairs, American Forces Information Service.

ACTION: Notice of meeting.

SUMMARY: The Defense Information School Board of Visitors will hold its semi-annual meeting at the American Forces Information Service, Alexandria, VA. Board members will review issues related to the status of the Defense Information School consolidation and joint-Service training facility under development. The meeting is open to the public.

DATES AND TIMES: May 23, 1996—8:00 a.m. to 10:15 a.m. (first session); 10:30 a.m. to 11:30 a.m. (second session); 1:30 p.m. to 3:30 p.m. (third session); May 24, 1996—9:00 a.m. to 11:20 a.m. (fourth session).

ADDRESSES: The first three sessions will be conducted in the main conference room, third floor, American Forces Information Service, 601 North Fairfax Street, Alexandria, VA. The fourth session will be conducted at the Defense Information School main conference room, 8361 Dutt Road, Fort Meade, MD.

FOR FURTHER INFORMATION CONTACT:

Mr. Wallace N. Guthrie, Jr., Training Directorate, American Forces Information Service, 601 North Fairfax Street, Room 225, Alexandria, VA 22314. Telephone (703) 428–0707.

Dated: April 29, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10977 Filed 5–2–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency Joint Military Intelligence College Board of Visitors; Meeting

AGENCY: Defense Intelligence Agency Joint Military Intelligence College.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Monday, 10 June 1996, 0900 to 1700; and Tuesday, 11 June 1996, 0830 to 1530.

ADDRESSES: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: April 29, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10976 Filed 5–2–96; 8:45 am]

BILLING CODE 5000–04–M

Government-Industry Advisory Committee on the Operation and Modernization of the National Defense Stockpile

ACTION: Notice of meeting.

SUMMARY: The sixth meeting of this committee will be held on May 17, 1996, at the Cascades Meeting Center, Williamsburg Woodlands, in Colonial Williamsburg, VA. The meeting is open to the public. This committee was established under Public Law 102–484. The meeting times and agenda are as follows:

TIME: 9:00 am to 2:30 pm.

AGENDA: The Committee will hear reports from the working group on Sales Methodology and from the working group on Stockpile Modernization.

For additional information contact Tom Meeker at 703–767–6476.

Dated: April 29, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10975 Filed 5–2–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning A Vaccine Against Gram-Negative Bacterial Infections

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial No. 08/230,402 entitled ''Vaccine Against Gram-Negative Bacterial Infections'' and 20 April, 1994 and Foreign Patent Application PCT/US95/04446 filed April 20, 1995. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: The invention relates to a vaccine which is effective in inducing the production of antibodies with which to immunize a second subject passively against infection by Gram-negative bacteria and LPS-mediated pathology. The vaccine comprises a non-covalent polyvalent complex formed between purified, detoxified LPS derived from E. coli and purified outer membrane protein derived from N. meningitidis. The same vaccine will also actively immunize a host subject against Gram-negative bacterial infections and LPS–mediated pathology. Meningococcal infections are included among those Gram-negative bacterial infections protected against by the vaccine.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–11012 Filed 5–2–96; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Available Surplus Real Property at Fitzsimons Army Medical Center, Located in Adams County, Aurora, CO

AGENCY: U.S. Army Corps of Engineers, Omaha District.

ACTION: Notice.

SUMMARY: This notice identifies the surplus real property located at Fitzsimons Army Medical Center, located in Adams County, Aurora, Colorado. Fitzsimons Army Medical Center is located south of Interstate 70 approximately three (3) miles south on Peoria Street (Exit 281).

FOR FURTHER INFORMATION CONTACT: Management & Disposal Branch, Real Estate Division, U.S. Army Corps of Engineers, Omaha District, 215 North 17th Street, Omaha, NE 68102–4978; Mr. Jeffrey L. Harp, Realty Specialist; telephone: 402–221–4388; fax 402–221–7688. For site specific information (i.e., acreage, floor plans, existing sanitary facilities), contact Fitzsimons Army Medical Center, Directorate of Public Works, ATTN: MMCHG–PW, Aurora, CO 80045–5001; Mr. Charles Nicely, 303–361–8540, or Mr. Ken Neeper, 303–361–4607; fax: 303–361–3424.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. Robert E. Olson, Executive Director, Fitzsimons Redevelopment Authority, Fitzsimons Army Medical Center, Building 500, Room 1040, P.O. Box 6027, Aurora, CO 80045–60277; telephone: 303–363–1940; fax: 303–363–9509.

The surplus real property totals 555.67 acres, more or less, and includes one golf course, 29 office buildings, 26 storage buildings, and 239 ''other type'' buildings. The total space of all buildings is approximately 2,825,234 square feet. The current use is as a medical center. Future uses may be limited to administrative, research and development functions.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–11011 Filed 5–2–96; 8:45 am]

BILLING CODE 3710–62–M

Available Surplus Real Property at Fort Totten, Located in Bayside, Queens County, NY

AGENCY: U.S. Army Corps of Engineers, New York District.

ACTION: Notice.

SUMMARY: This Notice identifies the surplus real property located at Fort Totten, Bayside, Queens County, New York. The installation is adjacent to the Cross Island Expressway and the Whitestone Bridge. Commercial airports are in close proximity.

FOR FURTHER INFORMATION CONTACT: Additional information regarding particular properties identified in this Notice (i.e., acreage, floor plans, existing sanitary facilities, exact street address), contact Ms. Maria Anglada, Army Corps of Engineers, 26 Federal Plaza, Room 2007, New York, NY 10278–0090 (telephone 212–264–9109, fax 212–264–0230); Ms. Linda Duncan, Base Transition Coordinator, Fort Hamilton, Brooklyn, New York 11252 (telephone 718–630–4510).

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to the Fort Totten Redevelopment Authority, c/o Honorable, Claire Shulman, Queens Borough President, City of New York, Office of the President of the Borough of Queens, 120–55 Queens Boulevard, Kew Gardens, New York 11424–1015. The Surplus real property at Fort Totten totals approximately 92.89 acres of land in fee, improved with eight (8) office buildings, nine (9) storage buildings, one hundred eighty eight (188) sets of family housing quarters, one hundred three (103) other structures including one (1) theater and one (1) post exchange.

Jay B. Hecht,

Chief, Real Estate Division.

[FR Doc. 96–11013 Filed 5–2–96; 8:45 am]

BILLING CODE 3710–06–M

Department of the Navy

Privacy Act of 1974; Amend Record System

AGENCY: Department of the Navy, DOD.

ACTION: Amend record system.

SUMMARY: The Department of the Navy proposes to amend one system of records notice in its inventory of record

systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on June 3, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The Department of the Navy proposes to amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The specific changes to the system of records are set forth below followed by the system of records notice published in its entirety, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: April 29, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N06320–2

SYSTEM NAME:

Family Advocacy Program System *(September 20, 1993, 58 FR 48869).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Case files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Navy's compilation of systems of records notices.

Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889-5066.

Centralized Child Sexual Abuse Case files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities, and all beneficiaries reported for abusing or neglecting such victims.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The Central Registry consists of information extracted from DD Form 2486.

Individual case files are maintained on the victim and alleged offender who qualify as beneficiaries.

Victim's file: consists of in-take data, photographs, audio tapes, risk assessment, case notes, committee reports, correspondence and other supporting data assembled relevant to abuse or neglect and generated by the Family Advocacy Program staff that are specific to the victim.

Offender's file: consists of in-take data, photographs, audio tapes, risk assessment, case notes, committee reports, correspondence and other supporting data assembled relevant to abuse or neglect and generated by the Family Advocacy Program staff that are specific to the offender.

Other non-permanent records generated outside of the Family Advocacy Program (i.e., NCIS investigative reports, local police reports, base security incident complaint reports, psychiatric and substance abuse evaluations, treatment reports, copies of pertinent medical record entries, child protective services reports, shelter reports, etc.), are maintained in a separate folder. The documents are retrieved by case number only.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; E.O. 9397; DOD Directives 6400.1, 6400.1M, 6400.2; SECNAVINST 1752.3; OPNAVINST 1752.2; and NAVMEDCOMINST 6320.22.'

PURPOSE(S):

Delete entry and replace with 'To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To notify and provide pertinent information to DOD and DON officials responsible for intervening in abuse and/or neglect incidents.

To provide headquarters centralized case management of child sexual abuse incidents.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the seventh paragraph.

STORAGE:

Delete entry and replace with 'Records may be stored in file folders, microfilm, personal computers, and other computerized or machine readable media.'

RETRIEVABILITY:

Delete entry and replace with 'Victim's file is retrieved by name of victim, case number, their Social Security Number, and/or year of incident.

Alleged offender's file is retrieved by alleged offender's name, case number, their Social Security Number and/or year of incident.

Central registry data is retrieved by any identifying data element on the DD Form 2486.'

SAFEGUARDS:

Delete entry and replace with 'These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Records are accessible only to authorized personnel who are properly screened and trained and/or have a need-to-know consistent with the purpose for which the information was collected.

Information maintained on a computer requires password protection. Computer terminals are located in supervised areas with access controlled system.

Family Advocacy Program Staff will ensure that the in-take assessment and clinical notes are not duplicated and placed in both the victim and alleged offender's files.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Family Advocacy Program case records are maintained at the activity 4 years after the last entry in the file. If there is no subsequent activity 4 years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis, MO 63132-5100, where they are retained for 50 years and then destroyed.

Central Registry data base is retained permanently at the Naval Medical Information Management Center. Paper copies are maintained for 3 years and then destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Central Registry: Chief, Bureau of Medicine and

Surgery, 2300 E Street, NW, Washington, DC 20372-5120.

Program Manager for Child Sexual Abuse Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370-6610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval activities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information in the case files about themselves should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to determine whether this system of records contains information in the Central Registry about themselves should address written inquiries to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372-5120.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to determine whether this system of records contains information in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370-6610.

Requests should contain the full name and Social Security Number of the individual.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves in the case files should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to access records about themselves that are contained in the Central Registry about themselves should address written inquiries to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372-5120.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to access records about themselves contained in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Victim; offender; medical and dental records; educational institutions; medical institutions; private practitioners; law enforcement agencies; public and private health and welfare agencies; and witnesses.'

* * * * *

N06320–2

SYSTEM NAME:

Family Advocacy Program System.

SYSTEM LOCATION:

Case files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Navy's compilation of systems of records notices.

Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889-5066.

Centralized Child Sexual Abuse Case files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities, and all beneficiaries reported for abusing or neglecting such victims.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Central Registry consists of information extracted from DD Form 2486, entitled Child/Spouse Abuse Incident Report.

Individual case files are maintained on the victim and alleged offender who qualify as beneficiaries.

Victim's file: consists of in-take data, photographs, audio tapes, risk assessment, case notes, committee reports, correspondence and other supporting data assembled relevant to abuse or neglect and generated by the Family Advocacy Program staff that are specific to the victim.

Offender's file: consists of in-take data, photographs, audio tapes, risk assessment, case notes, committee reports, correspondence and other supporting data assembled relevant to abuse or neglect and generated by the Family Advocacy Program staff that are specific to the offender.

Other non-permanent records generated outside of the Family Advocacy Program (i.e., NCIS investigative reports, local police reports, base security incident complaint reports, psychiatric and substance abuse evaluations, treatment reports, copies of pertinent medical record entries, child protective services reports, shelter reports, etc.), are maintained in a separate folder. The documents are retrieved by case number only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397; DOD Directives 6400.1, 6400.1-M, 6400.2; SECNAVINST 1752.3; OPNAVINST 1752.2; and NAVMEDCOMINST 6320.22.

PURPOSE(S):

To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To notify and provide pertinent information to DOD and DON officials responsible for intervening in abuse and/or neglect incidents.

To provide headquarters centralized case management of child sexual abuse incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed

appropriated to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private and public organizations and individuals for authorized health research in the interest of the federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

Note: Records of identify, diagnosis, prognosis or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United Sates shall, except as provided in 42 U.S.C. 290dd-2(e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2(b). These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Victim's file is retrieved by name of victim, case number, their Social Security Number, and/or year of incident.

Alleged offender's file is retrieved by alleged offender's name, case number, their Social Security Number and/or year of incident.

Central registry data is retrieved by any identifying data element on the DD Form 2486.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Records are accessible only to authorized personnel who are properly screened and trained and/or have a need-to-know consistent with the purpose for which the information was collected.

Information maintained on a computer requires password protection. Computer terminals are located in supervised areas with access controlled system.

Family Advocacy Program Staff will ensure that the in-take assessment and clinical notes are not duplicated and placed in both the victim and alleged offender's files.

RETENTION AND DISPOSAL:

Family Advocacy Program case records are maintained at the activity 4 years after the last entry in the file. If there is no subsequent activity 4 years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis, MO 63132-5100, where they are retained for 50 years and then destroyed.

Central Registry data base is retained permanently at the Naval Medical Information Management Center. Paper copies are maintained for 3 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Central Registry: Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372-5120.

Program Manager for Child Sexual Abuse Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370-6610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval activities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information in the case files about themselves should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to determine whether this system of records contains information in the Central Registry about themselves should address written inquiries to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372-5120.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to determine whether this system of records contains information in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370-6610.

Requests should contain the full name and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves in the case files should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to access records about themselves that are contained in the Central Registry about themselves should address written inquiries to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372-5120.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to access records about themselves contained in the centralized Child Sexual Abuse files about themselves should address

written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Victim; offender; medical and dental records; educational institutions; medical institutions; private practitioners; law enforcement agencies; public and private health and welfare agencies; and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(2) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 96–10979 Filed 05–02–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: May 23, 1996, from 1:30 p.m. to 4:00 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 503A/529A, 200 Independence Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3127, Switzer Building, Washington, D.C. 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provisions of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Update the membership on the issue of Champus and the Individuals with Disabilities Education Act, and (2) discuss the findings of the national survey on service integration in home visiting programs serving Part H eligible children and their families.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, S.W., Room 3127, Switzer Building, Washington, D.C. 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–11085 Filed 5–2–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Plutonium Finishing Plant Stabilization Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Limited Reopening of Public Comment Period.

SUMMARY: The U.S. Department of Energy (DOE) is evaluating alternatives for stabilizing plutonium-bearing materials at the Plutonium Finishing Plant (PFP) Facility, located at the Hanford Site near Richland, Washington. On December 5, 1995 (60 FR 62244), the DOE announced the availability of the Plutonium Finishing Plant Stabilization Draft Environmental Impact Statement (DOE/EIS–0244–D). The Draft Environmental Impact Statement (EIS) was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 and its implementing regulations. Subsequent to issuing the Draft EIS, DOE issued a proposed policy for comment regarding the treatment and disposition of excess residues with plutonium concentrations below 50 weight-percent. Following an analysis using this draft policy, DOE has concluded that it may be cost-effective to immobilize up to 280 kg (617 lb) of the plutonium-bearing materials at the PFP Facility and transport it to Hanford Site solid waste management facilities for storage. The EIS is therefore being revised to include an evaluation of the environmental impacts of implementing this alternative. A determination that this plutonium-bearing material lacks a beneficial use has not been made and this alternative would only be selected subsequent to such a decision. The intent of this notice is to notify the public of an additional alternative that would immobilize certain plutonium-bearing materials, and to reopen the comment period for 21 days in order to solicit comments on the proposed alternative.

DATES: DOE invites written and oral comments on the immobilization alternative from all interested parties. Comments or suggestions regarding the adequacy, accuracy, and completeness of the immobilization alternative will be

considered in preparing the Record of Decision, and should be submitted (postmarked) by May 24, 1996. Comments received after that date will be considered to the degree practicable.

ADDRESSES: Comments on the immobilization alternative may be made during the comment period by calling DOE toll free at 1–888–946–3700; by facsimile to 509/946–3734; by electronic mail to InterNet address ''b____ f____ jr____ ben____ burton@rl.gov''; or by writing to PFP Stabilization EIS, Attn: Mr. Ben Burton, PO Box 550, MSIN B1–42, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202/586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In two Notices of Intent published in the Federal Register on October 27, 1994 (59 FR 53969) and November 23, 1994 (59 FR 60358), the U.S. Department of Energy (DOE) announced its intent to prepare an Environmental Impact Statement (EIS) to resolve safety issues associated with the continued presence of relatively large quantities of chemically reactive materials at the Plutonium Finishing Plant (PFP) Facility. A Draft EIS was prepared pursuant to Section 102(2)(C) of NEPA in order to provide an objective, technical basis for decision makers and the public to evaluate alternatives to: (1) Convert plutonium-bearing materials at the PFP Facility into a more stable, safer form; (2) reduce radiation exposure to PFP Facility workers; and (3) reduce the cost of maintaining the PFP Facility and its contents. A preferred alternative for resolving the safety issue was identified to remove readily retrievable plutonium-bearing material in hold-up at the PFP Facility and stabilize these and other plutonium-bearing materials at the PFP Facility through four treatment processes: (1) Ion exchange, vertical calcination, and thermal stabilization of plutonium-bearing solutions; (2) thermal stabilization using a continuous furnace for oxides, fluorides, and process residues; (3) repackaging of metals and alloys; and (4) pyrolysis of polycubes and combustibles. The availability of this Draft EIS was announced in a Federal Register notice on December 5, 1995 (60 FR 62244).

Subsequent to issuing the Draft EIS, DOE issued a proposed policy for comment regarding the treatment and disposition of excess plutonium-bearing residues. This draft policy specifies that materials with plutonium concentrations less than 50 weight-percent are candidates for processing as waste for disposal, or separation from its residue matrix and packaging for storage according to DOE's safe storage criteria. Each responsible field office would evaluate which end state would be more cost-effective for each quantity, batch or category of plutonium-bearing residues. The performance factors for cost-effectiveness include worker exposure, waste generation, and cost. In addition, commentors during the public hearing requested that DOE consider an alternative of disposing of plutonium bearing material as waste.

Following an analysis using this draft policy, an in consideration of comments received during the public hearing on the Draft EIS, DOE has concluded that it may be cost-effective to immobilize up to 280 kg (617 lb) of the plutonium-bearing materials at the PFP Facility, and transport it to Hanford Site solid waste management facilities for storage. The EIS is therefore being revised to include an evaluation of the environmental impacts associated with this alternative. The following information describes the proposed immobilization alternative and identifies the associated potential environmental impacts. It is organized as follows:

I. Process Description

The current inventory of plutonium at the PFP Facility includes up to 280 kg (617 lb) of plutonium in concentrations less than 50 weight percent that DOE has identified as potentially being suitable for immobilization. This inventory includes oxides, process residues, and miscellaneous/other combustibles. The bulk of this material is stored in the PFP Facility vaults.

These plutonium-bearing materials would be immobilized within gloveboxes at the PFP Facility. A cement system was selected as a reasonable method to represent the potential immobilization options because: (1) the ingredients are inexpensive, safe, and readily available; (2) the equipment needs are simple; (3) the final waste form has proven stability and meets the waste acceptance criteria for the Hanford site solid waste management facilities; (4) it has been used extensively at the Hanford Site for immobilizing wastes; and (5) impacts from its use should be similar to those incurred for any other reasonable immobilization technique.

Equipment for the immobilization process would be identified and sized based on the follow special considerations: (1) waste and cement feeding equipment that would control feed rates; (2) cooling equipment to maintain a low temperature for the cement-waste-water mixture to minimize water vapor in the glovebox; and (3) reuse of containers when possible.

The plutonium-bearing material would be mixed with cement, and the mixture would be placed within nominal 3.4-liter (0.9 gallon) containers. The containers would remain in the glovebox and allowed to cure. Curing hardens the mixture and fixes the plutonium into the cemented matrix. After curing, a lid would be placed over the container. Once three containers were readied in this manner, they would be removed from the glovebox and packaged.

The containers would be packaged in accordance with the waste acceptance criteria for the Hanford Site solid waste management facilities. Packaging would include a 15.25-cm (6-in) diameter pipe container in 55-gallon drum configuration. The pipe container in drum configuration was selected as the preferred packaging technique compared to other packaging methods because it results in the fewest number of total drums and will, therefore, result in less exposure to workers. The pipe container in drum configuration would enable three steel encased, cemented waste containers to be placed in each drum. The maximum allowable limit for plutonium in each pipe container in drum configuration is 200 g (0.44 lb). Up to 1,600 drums of waste with a nominal plutonium content of 170 g (0.37 lb) per drum would be generated by this alternative.

Following packaging, the drums would be managed as transuranic or radioactive mixed waste. All waste drums would be transferred from the PFP Facility to Hanford site solid waste management facilities for continued onsite storage.

II. Anticipated Environmental Impacts

Impacts from the alternative for immobilizing plutonium-bearing materials were evaluated in terms of the following elements: health effects; air quality; waste treatment, storage, and disposal capacity; and transportation.

A. Health Effects

Health effects to PFP Facility workers, other Hanford Site workers, and members of the public from exposure to ionizing radiation would result from implementing the immobilization alternative. Both normal operations and accident conditions would contribute to radiation exposures. Conservative estimates of the possible consequences from the immobilization activities were quantified in terms of dose and latent cancer fatalities probabilities. Tables 1 and 2 tabulate these possible consequences.

TABLE 1.—ANTICIPATED HEALTH EFFECTS FROM ROUTINE RELEASES

Exposed individual or population	Dose received	Latent cancer fatality probability
PFP Facility Workers	80 person-rem	0.03
Hypothetical Maximally Exposed Individual (Hanford Site Worker)	1.2×10^{-4} rem	5.0×10^{-8}
Hanford Site Workers	6.2×10^{-4} person-rem	2.5×10^{-7}
Hypothetical Maximally Exposed Individual (Off-site Public)	2.3×10^{-5} rem	1.1×10^{-8}
General Public (352,500 people)	2.2 person-rem	1.1×10^{-3}

TABLE 2.—ANTICIPATED HEALTH EFFECTS FROM ACCIDENT RELEASES

Hypothetical maximally exposed individual	Dose received	Latent cancer fatality probability
PFP Facility Worker	210 rem	8.4×10^{-2}
Hanford Site Worker	1.6×10^{-4} rem	6.5×10^{-8}
Off-site Individual	5.7×10^{-5} rem	2.9×10^{-8}

B. Air Quality

Implementing the immobilization alternative would not result in appreciable impacts to air quality. High efficiency particulate air filters in use at the PFP Facility would minimize the amount of contaminants that would be discharged to the atmosphere. Although most expected air contaminants would be trapped by these filters, some fine particulates, referred to as PM_{10} (particulates less than 10 microns in size) would be emitted. The total estimated release of respirable particles from the immobilization alternative is 7.1 x 10^{-10} g/sec (1.6×10^{-12} lb/sec). The maximum downwind contaminant concentrations projected by an Environmental Protection Agency-approved computer model and the ambient air standards are provided in Table 3. The contaminant levels anticipated from the immobilization alternative are significantly lower than the regulatory ambient air standard.

TABLE 3.—PROJECTED MAXIMUM GROUND LEVEL CONCENTRATIONS OF PARTICULATE AIR CONTAMINANTS

Air contaminant	Maximum average concentration[a] ($\mu g/m^3$)	Background concentration[b] ($\mu g/m^3$)	Ambient air standard ($\mu g/m^3$)
PM_{10} (24-hr)	1.9×10^{-9}	81	150
PM_{10} (Annual)	3.9×10^{-10}	27	50

Notes: a. Modeled maximum ground-level concentrations occurred at 630 m from the stack.

b. Background concentrations for PM_{10} taken from 1987 data (Pacific Northwest Laboratories, 1991, Air Quality Impact Analysis, PNL–7681, Pacific Northwest Laboratory, Richland, Washington)

C. Treatment, Storage, and Disposal Capacity

Implementing the immobilization alternative would also result in impacts to treatment, storage, and disposal capacity. Hanford site solid waste management facilities that would receive the 1,600 drums anticipated to be generated as a result of the immobilization alternate include the Low Level Burial Grounds, Transuranic Waste Storage and Assay Facility, Central Waste Complex, and the Waste Receiving and Processing Facility. The available capacity at these facilities for managing low-level radioactive and mixed waste is considered sufficient. The available capacity for managing transuranic and transuranic mixed waste is currently being evaluated. This information will be available in the Final EIS.

D. Transportation

Finally, implementing the immobilization alternative would result in transportation impacts. Over a 6 to 12 month period, up to 90 truck trips would result from the shipment of the immobilized materials from the PFP Facility to Hanford Site solid waste management facilities. This corresponds to an average of 7 to 15 trips per month. These trips would be short in distance (2 km [1.2 miles] or less) and would be made during off-peak hours. Compared with the current volume of vehicular traffic on nearby Hanford Site transport roadways, the additional truck trips would not be expected to adversely impact the existing or future Hanford Site transportation system.

III. Alternatives for Immobilization

Cementation using a pipe container in drum configuration was selected because of its ability to satisfy packaging and immobilization requirements based on worker safety and economic considerations. A cement system was selected because it would meet acceptance criteria for Hanford Site solid waste management facilities; the ingredients are inexpensive, safe, and readily available; equipment requirements can be very simple; the final form has proven stability; and the method has been used extensively at the Hanford Site for immobilizing transuranic materials.

In contrast, immobilizing of materials in a glass (i.e., vitrification) or a ceramic matrix was not considered desirable because of the cost, specialized equipment required, lack of such equipment on the Hanford Site, and lack of site experience. These factors would result in delays in implementing these alternatives. The lack of site experience and anticipated delays would result in additional health and safety risks.

Another alternative would be to mix the plutonium with uranium to produce a mixed oxide fuel suitable for energy production in a nuclear power reactor. Because of the relatively small quantity of plutonium material being considered, it was not considered reasonable to develop the technology at Hanford to support this alternative.

IV. Availability of the Immobilization Alternative

Copies of the proposed immobilization alternative may be reviewed at the following locations, or may be obtained by calling DOE at 1–888–946–3700:

U.S. Department of Energy, Headquarters, Freedom of Information Reading Room, Forrestall Building, 1000 Independence Ave. SW., Room 1E–0190, Washington, DC 20585, 202/586–3142

DOE Public Reading Room, Washington State University, Tri Cities Branch, 100 Sprout Road, Richland, WA 99352, 509/376–8583

University of Washington, Suzzallo Library, Government Publications, 15th Ave N.E. and Campus Parkway, Seattle, WA 98185, 206/543–1937

Gonzaga University, Foley Center, E. 502 Boone Avenue, Spokane, WA 99258, 509/324–5931

Portland State University, Branford Price Millar Library, SW Harrison and Park, Portland, OR 97207, 503/725–3690

Signed in Richland, Washington, this 25th day of April, 1996 for the United States Department of Energy.

Paul F.X. Dunigan, Jr.,

NEPA Compliance Officer, Richland Operations Office.

[FR Doc. 96–11034 Filed 5–2–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Wetlands Involvement for Refurbishment of Uranium Hexafluoride Cylinder Storage Yards C–745–K, L, M, N, and P and Construction of a New Uranium Hexafluoride Cylinder Storage Yard (C–745–T) at the Paducah Gaseous Diffusion Plant Near Paducah, KY

AGENCY: Department of Energy (DOE).

ACTION: Notice of wetlands involvement.

SUMMARY: DOE proposes to renovate existing storage yards and construct a new storage yard to accommodate restacking of approximately 19,000 steel cylinders containing uranium hexafluoride at the Paducah Gaseous Diffusion Plant (PGDP) in McCracken County, Kentucky. Construction of the new storage yard would result in the loss (filling) of less than one acre of wetlands. In accordance with 10 CFR Part 1022, DOE will prepare a wetlands assessment and will perform the proposed action in a manner so as to avoid or minimize potential harm to or within the affected wetlands.

DATES: Comments are due to the address below no later than May 20, 1996.

ADDRESSES: Comments should be addressed to: Mr. Jimmie C. Hodges, Paducah Site Manager, U. S. Department of Energy, 5600 Hobbs Road, Paducah, KY 42001. Phone (502) 441–6800.

FOR FURTHER INFORMATION CONTACT: Further information on the proposed action and wetlands assessment can be obtained from Mr. Jimmie C. Hodges, Paducah Site Manager (see **ADDRESSES** above). Information on general DOE wetlands environmental review requirements is available from: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–25), U. S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: PGDP is an operational uranium enrichment facility owned by DOE and operated by the United States Enrichment Corporation. A consequence of the uranium enrichment process is the accumulation of depleted uranium hexafluoride (UF_6). Depleted UF_6, a solid at ambient temperatures, is stored in large steel cylinders weighing up to 14 tons each. DOE is responsible for approximately 32,200 cylinders of UF_6 stored at PGDP. Storage conditions are suboptimal and have resulted in accelerated corrosion of cylinders and have increased the potential for a release of hazardous substances. Consequently, DOE has proposed refurbishment of certain existing yards and construction of a new storage yard (C–745–T).

The C–745–T yard would consist of a concrete pad occupying approximately 43,200 m^2 (450,000 ft^2). The initial construction activities in the storage yard would consist of clearing and grubbing the area and stripping the topsoil. After this excavation, a storm water drainage system would be installed. The excavated area would be filled with soil and gravel to achieve the desired design elevation. A concrete pad would be constructed on top of the fill.

The proposed site for the C–745–T cylinder storage yard is immediately south of existing cylinder yards at the southern end of the plant. Of available sites, DOE considers the proposed site to best meet siting criteria. A different site was initially proposed but was discovered to encompass approximately 1.8 hectares (4.5 acres) of wetlands. In order to minimize impacts to wetlands in accordance with Executive Order 11990, ''Protection of Wetlands,'' and 10 CFR Part 1022, DOE's ''Compliance With Floodplain/Wetlands Environmental Review Requirements,'' DOE selected the current proposed site.

Six small, isolated wetlands are present at the proposed C–745–T yard site. These wetlands are classified as palustrine emergent, palustrine scrub/shrub, and palustrine forested, according to the U.S. Fish and Wildlife Service wetland classification system. Palustrine wetlands in the vicinity of PGDP are those less than 8 hectares (20 acres) in surface area with a water depth less than 2 m (6.6 ft) during low water. Emergent vegetation is erect, rooted, non-woody; scrub/shrub vegetation is woody not exceeding 6 m (20 ft) in height; and forested vegetation is woody, exceeding 6 m (20 ft) in height.

The total area of wetlands directly impacted by the proposed action would be 0.32 hectare (0.8 acre). Under the worst case scenario, an additional 0.12 hectare (0.3 acre) of wetlands could be impacted by (1) construction equipment accessing the area or materials and equipment staged in wetland areas, if proper precautions (best management practices) are not followed, or (2) diversion of flow away from a man-made drainage ditch which contains wetlands.

In accordance with 10 CFR Part 1022, DOE will prepare a wetlands assessment for the proposed action. The wetlands assessment will be included in the environmental assessment (EA) being prepared for the proposed action in accordance with the requirements of the National Environmental Policy Act.

Issued in Oak Ridge, Tennessee on April 1, 1996.

James L. Elmore,

Alternate NEPA Compliance Officer.

[FR Doc. 96–11033 Filed 5–2–96; 8:45 am]

BILLING CODE 6450–01–P

Morgantown Energy Technology Center; Research Opportunity Announcement (ROA) Applied Research and Development

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Issue of a research opportunity announcement.

SUMMARY: The Department of Energy is soliciting proposals for supporting the U.S. Department of Energy's (DOE's) Office of Science and Technology's applied research efforts for the development of technologies having potential applications in the Environmental Restoration and Waste Management (EM) program. Technologies which do not duplicate existing work; complement or enhance existing or planned work; and best serve the needs of the EM program are desired. A proposed technology may be a device, process, material, or method that improves DOE's capabilities in the following areas: subsurface containment; mixed waste characterization, treatment, and disposal; tank waste remediation; decontamination and decommissioning; characterization, monitoring, and sensor technology; efficient separations and processing; and robotics technology development program.

For the purpose of this program, ''applied research'' is the systematic application of knowledge toward the production of useful devices, materials, or methods, including design, development, and improvement of prototypes and processes to meet specific requirements. Proposals for basic research are not desired under this ROA. Proposals will not be accepted for which the purpose is demonstration.

It is not the purpose of this solicitation to support, and no proposal will be selected to conduct, support service activities, conference or training activities, or projects which do not conduct research (e.g., paper studies). Proposals submitted in response to this ROA must address one, and only one, of the need areas. If an Offeror has the desire to propose to more than one need area, multiple proposals must be submitted.

DATES: Proposals may be submitted at any time after the issuance date of this ROA up to and including one year after the issue date. Proposals must state an acceptance period of at least 180 days.

ADDRESSES/FOR FURTHER INFORMATION CONTACT: The ROA and an Information Package are available on the Internet at http://www.metc.doe.gov/business/solicita.html. Requests for information concerning the ROA should be submitted in writing to the following address: U.S. Department of Energy, ATTN: Crystal A. Sharp, M.S. I07, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV, 26507–0880, Phone Number (304) 285–4634, FAX (304) 285–4683, or Internet Address: CSHARP@METC.DOE.GOV.

SUPPLEMENTARY INFORMATION:

Identification Number and Authority for Issuance

A. DE–RO21–96MC33204.

B. The use of broad agency announcements is authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and the Federal Acquisition Regulation at part 6.102(d)(2) as supplemented by the Department of Energy Acquisition Regulation.

C. The internet information package includes a summary, more complete description of the research areas identified in the areas of research section, above, and the following documents: A proposal cover sheet; DOE Representations, Certifications, and Other Statements of Bidders/Offerors; a Certificate of Environmental Safety and Health Program; a Statement of Work format; Standard Form 1411; a cost proposal preparation format; sample reporting requirements; information regarding patent and data clauses and rights; set of standard contract clauses; and a list of references.

James J. Grabulis,

Director, Acquisition and Assistance Division.

[FR Doc. 96–11032 Filed 5–2–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–338–000]

ANR Pipeline Company; Notice of Application

April 29, 1996.

Take notice that, on April 19, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an abbreviated application in Docket No. CP96–338–000, pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct and operate new storage facilities in the Goodwell Storage Field, in Newaygo County, Michigan, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

ANR states that data recently obtained from the Goodwell Storage Field's observation wells indicate that the southeastern portion of the storage reservoir cannot be efficiently drained using the storage field's existing injection/withdrawal wells. ANR plans to drill the new horizontal injection/withdrawal well at the southeastern edge of the storage reservoir in the Goodwell Storage Field, and construct approximately 920 feet of 6-inch diameter pipeline to connect the new well to the storage field's gathering system. The estimated cost of the proposed facilities is $568,000.

ANR states that the new well will improve the injection/withdrawal capability in the southeastern portion of the storage reservoir, and may increase withdrawals slightly toward the end of the storage withdrawal season. ANR adds, however, that the new well will not increase the maximum peak-day deliverability or the maximum working storage capacity of the storage field.

ANR plans to drill the new well in the SE ¼ of Section 9, Goodwell Township, Newaygo County, Michigan, from a surface location 127 feet southeast of ANR's Goodwell #57 injection/withdrawal well, encountering the storage reservoir approximately 400 feet southeast of the surface location. ANR plans to complete the new well by drilling approximately 1,500 feet of open drain hole to the southeast, ending in the NW ¼ of the NE ¼ of Section 16, in Goodwell Township.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before May 20, 1996, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or the Commission on its own motion

believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11056 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–3–000]

Equitable Storage Company; Notice of Informal Settlement Conference

April 29, 1996.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Wednesday, May 30, 1996, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Esref Bilgihan at (202) 208–0128.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11061 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–336–000]

Northern Natural Gas Company; Notice of Application

April 29, 1996.

Take notice that on April 18, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–336–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to increase the horsepower capacity of its Galena compressor station,[1] located on the East Leg of its mainline system in Jo Daviess County, Illinois, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to operate unit #1 at its Galena compressor station at its design 3,800 NEMA horsepower (HP) rated level; [2] and to replace unit #2 with a 3,800 HP unit, in order to maintain system reliability. Northern explains that the presently operational unit #1 was recently installed to respond to an emergency situation that occurred on or about February 7, 1996, when the original unit #1 failed.

Northern states that operating unit #1 at its rated horsepower and replacing unit #2 at the Galena compressor station at this time would provide the following benefits to Northern's shippers: (1) Reliable service would be maintained on the East Leg through the replacement of antiquated units which are critical to the heating season market area demands of Northern's shippers; and (2) increased efficiency is associated with the proposed simple cycle units as opposed to the existing 3,500 HP recuperating units. Northern estimates that the cost of replacing unit #2 is approximately $368,062 which would be financed with internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 285.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11055 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[1] A temporary certificate was issued in Docket No. CP75–21 on March 13, 1975, authorizing, among other things, the construction and operation of the 7,000 HP compressor station. The station was placed in service on July 15, 1975. By order issued July 7, 1977, Northern received permanent certificate authorization in Docket No. CP75–21 to operate the compressor station (order designated Opinion No. 810 (59 FPC 533 at 559 (1977)).

[2] NEMA represents a rating method where HP is calculated at 1000 feet above sea level at an ambient temperature of 80° Fahrenheit.

[Project No. 137–002–CA]

Pacific Gas and Electric Company; Notice Granting Extension of Time

April 29, 1996.

On March 1, 1996, the Notice of Application Ready for Environmental Analysis (NREA) for the Mokelumne River Project No. 137 was issued in the Federal Register (Vol. 61 No. 42 FR 8055). The NREA solicited all comments, recommendations, terms and conditions, and prescriptions concerning this project be filed with the Commission by April 23, 1996. All reply comments must be filed with the Commission by June 7, 1996.

In a letter filed on April 22, 1996, the U.S. Department of the Interior (Interior) requests a 30 day extension of time to comment on the NREA. Interior said that it needs more time to evaluate the adequacy of instream flows and the proposed fish protection facilities. Because there is an extensive amount of information to evaluate associated with the Mokelumne Project, the Commission is extending the date to file comments, recommendations, terms and conditions, and prescriptions until May 23, 1996. The date to file reply comments with the Commission is extended until July 8, 1996.

If you have any questions about this matter, please call Tom Dean at (202) 219–2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11058 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–203–022]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

April 29, 1996.

Take notice that on April 16, 1996 Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) tendered for filing a Refund Report made pursuant to the Commission's Orders dated January 12, 1994 and October 18, 1994 in the above dockets.

Panhandle and Trunkline state that the Refund Report sets forth Panhandle's refund obligation to Columbia Gas Transmission Corporation (Columbia) for production related costs and that payment to Columbia was made on March 28, 1996.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 6, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Pubic Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11062 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–214–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 29, 1996.

Take notice that on April 24, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, proposed to be effective May 25, 1996.

Panhandle asserts that the purpose of this filing is to comply with the Commission's orders issued September 28, 1995 and February 29, 1996 in Docket No. RM95–3–000.

Panhandle states that the purpose of this filing is to bring it FERC Gas Tariff into compliance with the Commission's updated Regulations as set forth in Order No. 582 (Final Rule) and Order No. 582–A (Final Rule; Order on Rehearing) issued September 28, 1995 and February 29, 1996 respectively, in Docket No. RM95–3–000, Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs. Specifically, Panhandle is: (1) Adding its telephone and facsimile numbers, as well as street address on the title page; (2) expanding the table of contents to include individual sections of the General Terms and Conditions and the table of contents for Original Volume No. 2; (3) providing an updated system map showing zone boundaries and a separate map for each zone; (4) rearranging rate sheet components to show adjustments approved pursuant to Subpart E of the Regulations in a separate column; (5) including a statement describing the order in which Panhandle discounts its rates; and (6) updating references to Part 154 of the Regulations.

Panhandle states that a copy of this filing is being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11064 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–203–061 and RP92–132–048; Phase II—PCB Issues]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

April 29, 1996.

Take notice that on April 24, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its Fifth Revised FERC Gas Tariff, Volume No. 1, the following tariff sheets, with the effective dates as indicated:

First/Substitute First/Sheet No. 301 (Effective July 1, 1995)
Third Revised Sheet No. 301 (Effective May 3, 1996)
First Revised Sheet No. 407 (Effective May 3, 1996)

Tennessee states that this filing is intended to supplement Tennessee's March 18, 1995 Initial Filing in this proceeding for the sole purpose of changing the Article number that is assigned to the ''PCB Adjustment'' provision in the General Terms and Conditions of Tennessee's tariff.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11051 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR96–12–000]

Total Petroleum, Inc. v. Citgo Products Pipeline Company and Williams Pipe Line Company; Notice of Complaint

April 29, 1996.

Take notice that on April 19, 1996, Total Petroleum, Inc. (Total) filed a complaint pursuant to section 13(l) of the Interstate Commerce Act (ICA), section 1803 of the Energy Policy Act of 1992, and Rule 206 of the Commission's Rules of Practice and Procedure against Citgo Products Pipeline Company (Citgo) and Williams Pipe Line Company L.P. (Williams) in the above-referenced docket.

Total alleges that Citgo has proposed major changes to its proration policy without first seeking approval of such changes through amendment of its tariff, and that this is a violation of section 6 of the ICA. Total further alleges that the new proration policy and the timing of the change is unduly preferential toward certain shippers, including Citgo's affiliate, Citgo Petroleum Corporation. Total further asserts that the proposed change has reduced the capacity on Citgo that Total can reliably obtain from approximately 200,000 barrels per month to 53,000 barrels per month. To avoid the resulting reduction in its nominations, Total requests the Commission to take immediate action directing Citgo to cease and desist from implementing its new proration policy and to return to its pre-existing policy until lawfully changed.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such

motions or protests should be filed on or before May 20, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before May 20, 1996.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11057 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–329–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

April 29, 1996.

Take notice that on April 16, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–329–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a tap, measuring, regulating, and appurtenant facilities for the delivery of transportation gas to Peoples Natural Gas Company (Peoples) in Harvey County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to install a 4-inch tap connection, a dual 3-inch regulator setting, a dual 6-inch orifice meter setting, and appurtenant facilities in the Northeast Quarter (NE/4) of Sections 20, Township 22 South, Range 1 West, Harvey County, Kansas, to deliver transportation gas to Peoples for system supply.

WNG does not anticipate that the deliveries through the new tap will have any effect on peak day deliveries. Peoples estimates the annual delivered volume as 1,825,000 Dth with a peak day volume of 8,000 Dth. The total volume delivered will not exceed total volumes authorized prior to this request. The estimated construction cost is $97,704 which will be fully reimbursed by Peoples. WNG states that this change is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries specified without detriment or disadvantage to other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11054 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–175–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 29, 1996.

Take notice that on April 24, 1996 Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 6B, Substitute Second Revised Sheet No. 250A and Substitute First Revised Sheet No. 250B, to be effective April 13, 1996.

WNG states that on March 13, 1996, it filed tariff sheets in this proceeding to be effective April 13, 1996, to discount its fuel charges in certain competitive situations for transactions involving no incremental fuel consumption. By order issued April 9, 1996, the Commission accepted the tariff sheets to become effective April 13, 1996, subject to WNG filing, within 15 days of the issuance of the order, revised tariff sheets to reflect that WNG will assess a zero fuel charge for all transportation backhauls between the specified receipt and delivery points. The instant filing is being made to reflect this tariff change.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11063 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1065–000, et al.]

Baltimore Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

April 26, 1996.

Take notice that the following filings have been made with the Commission:

1. Baltimore Gas and Electric Company

[Docket No. ER96–1065–000]

Take notice that on April 24, 1996, Baltimore Gas and Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Docket No. ER96–1594–000]

Take notice that on April 18, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Illinois Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 1, 1996.

Comment date: May 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Power Solutions, LLC

[Docket No. ER96–1599–000]

Take notice that on April 19, 1996, Pacific Power Solutions, LLC tendered for filing an Application for Blanket Authorizations, Waivers, and Order Approving Rate Schedule.

Comment date: May 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER96–1619–000]

Take notice that on April 23, 1996, Arizona Public Service Company (APS), tendered for filing an Amendment No. 1 (Amendment) to Service Schedule B (Schedule) of the Power Service Agreement between APS and Citizens Utilities Company (Citizens). The Amendment extends the term of the Schedule through December 31, 2004.

The parties request an effective date 60 days after filing.

Copies of this filing have been served upon Citizens and the Arizona Corporation Commission.

Comment date: May 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER96–1620–000]

Take notice that on April 23, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Strategic Energy, Limited Partnership (Strategic Energy). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Strategic Energy to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Strategic Energy a Participant in the Pool. NEPOOL requests an effective date on or before March 28, 1996, for commencement of participation in the Pool by Strategic Energy.

Comment date: May 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Dennis R. Hendrix

[Docket No. ID–2958–000]

Take notice that on April 23, 1996, Dennis R. Hendrix (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director: Texas Commerce Bank, National Association
Director: Tampa Electric Company

Comment date: May 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10991 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–127–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Lanham X–2 Storage Replacement Project and Request For Comments on Environmental Issues

April 29, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction, abandonment, and operation of the facilities proposed in the Lanham X–2 Storage Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Columbia Gas Transmission Corporation (Columbia) proposes to construct and operate approximately 6.8 miles of storage pipelines consisting of 0.6 mile of 12-inch-diameter, 0.8 mile of 10-inch-diameter, 0.8 mile of 8-inch-diameter, 2.6 miles of 6-inch-diameter, and 2.0 miles of 4-inch-diameter pipelines. These facilities would replace approximately 7.5 miles of existing storage pipelines proposed for abandonment consisting of 0.4 mile of 12-inch-diameter, 1.0 mile of 10-inch-diameter, 0.5 mile of 8-inch-diameter, 2.3 miles of 6-inch-diameter, and 3.3 miles of 4-inch-diameter pipelines. All of these facilities are within the Lanham X–2 Storage Field in Kanawha and Putnam Counties, West Virginia. Columbia proposes these actions to replace aged, deteriorated facilities.

The project would also involve the replacement of wellhead piping and measurement facilities at 20 existing wells, installation of an on-line pigging system on the 10-inch-diameter pipeline, and installation of fluid gathering facilities. Columbia would also construct four pig launchers and receivers, one gate valve setting, and three anode beds with associated rectifier poles and cables. In addition, storage well 7067 would be abandoned and storage well 7126 would be converted to an observation well.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Approximately 43 percent of the replacement pipeline would be located in new rights-of-way. The remaining construction rights-of-way would partially or fully overlap Columbia's existing rights-of-way. Columbia intends to use a75-foot-wide construction right-of-way for approximately 55 percent of the replacement pipeline. Columbia would use a 100-foot-wide construction right-of-way for the remaining 45 percent of the replacement pipeline for side hill cuts and topsoil conservation areas. Additional working spaces adjacent to the construction right-or-way (such as for stream crossings and staging areas) would be identified during the environmental analysis and approved before use.

Over, about 104d acres of land would be disturbed by construction and abandonment, including three new access roads, one pipeyard, and 45 staging areas. Columbia would also widen as many as 25 existing access roads to be used for the project. Full control of all areas where existing pipeline would be abandoned in-place (approximately 22 acres) and all disturbed areas outside of the new permanent rights-of-way (approximately 62 acres) would revert back to landowners after construction and restoration have been completed.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental

[1] Columbia Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- public safety
- land use
- endangered and threatened species
- cultural resources

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Eleven residences are near the construction rights-of-way.
- Waterbodies would be crossed at 19 locations by new and retirement construction. One of these, the Pocatalico River, has been designated as a high quality stream and is over 100 feet wide at two proposed wet ditch crossings.
- Construction and abandonment activity would disturb 23 wetlands.
- Cultural resources have been identified.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–127–000;
- Send a *copy* of your letter to: Ms. Elizabeth Secrest, EA Project Manager, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 72–50, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before June 6, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. Secrest at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived.

Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Elizabeth Secrest, EA Project Manager, at (202) 208–0918.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11050 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[FERC Docket No. CP95–35–000; PRPB Docket No. 94–62–1219–JPM]

Puerto Rico Planning Board; EcoEléctrica, L.P.; Notice of Availability of the Final Environmental Impact Statement/Environmental Impact Statement for the Proposed EcoEléctrica LNG Import Terminal and Cogeneration Project in Guayanilla, Puerto Rico

April 29, 1996.

The staff of the Federal Energy Regulatory Commission (FERC) and the Puerto Rico Planning Board (PRPB) have prepared this joint final environmental impact statement/environmental impact statement (FEIS/EIS) on the natural gas facilities proposed by EcoEléctrica, L.P. (EcoEléctrica) in the above dockets.

The FEIS/EIS was prepared to satisfy the requirements of the National Environmental Policy Act and Puerto Rico's law requiring an EIS under the Puerto Rico Environmental Quality Board Regulations (article 4[c] of Law No. 9). The FERC and PRPB staffs conclude that approval of the proposed project, with appropriate mitigation measures including receipt of necessary permits and approvals, would have limited adverse environmental impact. The Joint EIS evaluates alternatives to the proposal.

The joint EIS assesses the potential environmental effects of the construction and operation of the proposed EcoEléctrica LNG Import Terminal and Cogeneration project, which includes the following facilities:

- A marine terminal for unloading liquefied natural gas (LNG) tankers, two 1,000,000-barrel LNG storage tanks, and an LNG vaporization system.
- A 461-megawatt (±10%) electric cogeneration facility that would use the vaporized LNG as a fuel source. The power plant facility would consist of two gas turbines fueled by natural gas and one steam generator. The gas turbines could also use propane (LPG) as a secondary fuel and low sulfur number 2 oil as an emergency fuel.
- A desalination facility that could generate up to 4,000,000 gallons of potable water per day. The multistage flash system would use the surplus heat from power production to produce

freshwater. The power plant would require up to 1,000,000 gallons per day for operating needs. The surplus would be sold for public use.

• Other facilities necessary for the operation of the cogeneration facility include a 2.3-mile-long, 230-kilovolt (kV) transmission line connecting the plant substation to an existing Puerto Rico Electric Power Authority (PREPA) substation; a 3.5-mile-long, 8-inch-diameter pipeline to supply LPG to the cogeneration facility; a 2.0-mile-long, 12-inch-diameter water pipeline for connecting to an existing offsite water supply or to outside delivery systems; a 1.2-mile-long 24-inch-diameter natural gas pipeline stub; and a 1.1-mile-long, nominal 24-inch-diameter natural gas pipeline to serve the PREPA Costa Sur Power Plant.

The joint EIS has been placed in the public files of the FERC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2E, Washington, DC 20426, (202) 208–1371

Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940–1119, (809) 727–4444

Copies have been mailed to Federal, Commonwealth, and local agencies, public interest groups, interested individuals, public libraries, newspapers, and parties to this proceeding.

A limited number of copies of the joint EIS are available from either:

Mr. Chris Zerby, Federal Energy Regulatory Commission, Office of Pipeline Regulation, Room 72–55, 888 First Street, NE, Washington, DC 20426, (202) 208–0111

Mrs. Maria Gordillo, Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940–1119, (809) 727–4444

Additional information about this project is available from Mr. Chris Zerby, FERC EIS Project Manager, at (202) 208–0111. Information concerning the involvement of the Puerto Rico Planning Board can be obtained from Mrs. Maria Gordillo, PRPB EIS Project Manager, at (809) 727–4444.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11052 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–53–000]

NE Hub Partners, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed NE Hub Tioga Storage Project and Request for Comments on Environmental Issues

April 29, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the NE Hub Tioga Storage Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the project.

Summary of the Proposed Project

On November 7, 1995, NE Hub Partners, L.P. (NE Hub) filed an application requesting, among other things, authority to construct and operate a high deliverability natural gas salt cavern storage facility. In conjunction with the storage facilities, NE Hub said that it, along with other partners, intended to develop a nonjurisdictional commercial salt business and possibly other nonjurisdictional business ventures at the site (i.e. compressed air storage for electric generation and petroleum storage). The project involves the construction of two gas storage caverns with a capacity of up to 3 billion standard cubic feet per cavern. Leaching of the storage caverns in the existing underground salt formation would require the withdrawal of 2,400 gallons of fresh water per minute from the Cowanesque Reservoir over about 28 months. After the water is pumped from a developing cavern, a portion of the brine water would be injected into an underground formation through brine disposal wells and the remainder would be shipped out by railroad cars to an evaporation plant. When completed, NE Hub indicated that the storage caverns would be connected to pipelines owned by CNG Transmission Corporation (CNG), Tennessee Gas Pipeline Company (Tennessee), and North Penn Gas Pipeline Company (North Penn).

In its application and subsequent responses to staff data requests, NE Hub has said that it intended to begin construction of certain bringing facilities, including cavern leaching wells, brine disposal wells, and piping, in June 1996, prior to Commission action on its certificate application. NE Hub asserts that Commission jurisdiction should not attach until the cavern leaching process commences. Any facilities needed to start that process (ie., freshwater intake and pump station; freshwater pipeline; a brining facility consisting of pumps, storage tanks, injection pumps, booster pumps, separators, centrifuges and support facilities; brine pipeline; cavern leaching wells; brine disposal wells; and possibly a rail loading facility) will be built prior to Commission certification.

We intend to review the environmental impacts of the following of NE Hub's activities which involve construction and operation:

- Two cavern leaching/storage wells used to leach two caverns (first cavern available for the 1997–1998 winter heating season and the second cavern available for the 1999–2000 winter heating season);
- Four segments of 26-inch-diameter transmission pipeline totalling 12.2 miles;
- 7.1 miles of 4-inch-diameter fuel gas lines;
- Approximately 2.5 miles of 24-inch-diameter gas storage pipeline;
- Three meter stations;
- Six compressors (18,750 horsepower total) for two storage caverns;
- Three gas heaters;
- A methanol injection system;
- Two gas withdrawal separators;
- One dehydrator;
- Other related gas facilities;
- A freshwater intake pumping station at Cowanesque Reservoir;
- 2.2 miles of 12-inch-diameter freshwater pipeline to transport water to the brining operation;
- Three brine disposal wells;
- Freshwater injection pumps;
- Freshwater and brine holding tanks;
- A leaching plant;
- Brine pumps;
- 19.2 miles of 12-inch-diameter water injection/brine disposal pipeline;
- Five storage tanks for process fluids;
- A rail car loading system to ship either the brine or crystallized salt; and potentially,
- An unspecified diameter/length pipeline and an evaporate plant to dispose of the brine and other facilities to the extent needed for brine disposal.

NE Hud's interconnections with CNG, Tennessee, and North Penn would require the construction of a hot tap, meter, pressure regulator, valves, and other related facilities at each delivery site.

The general location of the project facilities and specific locations for the know facilities on new sites are shown in appendix 1.[2]

[1] NE Hub Partners, L.P.'s application was filed with the Commission under section 7 of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

The project would require about 900 acres of land. The proposed gas pipelines would be partly built adjacent to existing pipeline or electric transmission line rights-of-way (ROW). The construction ROW would typically be 100 feet wide consisting of a 50-foot-wide permanent ROW and a 50-foot-wide temporary ROW. The construction ROW would serve as a multiple use ROW comprising gas pipelines, brine pipelines, freshwater pipelines, and fuel gas pipelines were applicable. Following construction, the disturbed area would be restored and the 50 feet of temporary ROW would be allowed to revert to its former land use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

We intend to use but not duplicate work of other agencies to the greatest extent possible. The water intake at the Cowanesque Reservoir is under review by the U.S. Army Corps of Engineers, Baltimore, Maryland District Office. The leaching process and subsurface brine disposal are under joint jurisdiction of the U.S. Environmental Protection Agency and the Pennsylvania Department of Environmental Protection (PADEP). Land disposal permitting is also required by the PADEP. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegatation and wildlife
- endangered and threatened species
- Noise impacts
- land use
- cultural resources
- hazardous waste
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by NE Hub.

- 46 streams would be crossed and some of them are coldwater fisheries that support trout.
- 58 wetlands would be crossed totalling about 30.8 acres.
- Federal and state-listed threatened or endangered species may be affected.
- The project may impact cultural resources.
- Potential land disposal of 2,200 cubic yards of solid material (brine filter cake) may occur from the brine leaching process used to develop two caverns. The brine filter cake may be mixed into the top 2 feet of soil and spread over 9.4 acres.
- Noise impacts would occur to nearby residences from the operation of the compressor station, water and brine pumping equipment, well drilling, and the rail car loading station.
- A pipeline and evaporation plant may be constructed that would be associated with the potential salt business at an undetermined location near the project area.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and property recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–53–000;
- Send a *copy* of your letter to: Mr. John Wisniewski, EA Project Manager, Federal Energy Regulatory Commission; 888 First St., N.E., PR–11.2, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before May 28, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Wisniewski at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. John Wisniewski, EA Project Manager, at (202) 208–1073.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11065 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–57–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed 1996 Zone EF Expansion Project

April 29, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an

environmental assessment (EA) on the natural gas pipeline facilities proposed by Northern Natural Gas Company (Northern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Northern wants to expand the capacity of its facilities in Minnesota and Wisconsin to transport an additional 46, 400 million British thermal units per day of natural gas to six local distribution companies. Northern seeks authority to:

- Abandon the 10,600-horsepower (hp) Owatonna Compressor Station in Steele County, Minnesota and construct and operate a new 10,600-hp Fairbault Compressor Station in Rice County, Minnesota;
- Extend its 30-inch-diameter C-line Extension by about 2.24 miles in Washington County, Minnesota;
- Increase the capacity of its Elk River system by extending the existing 20-inch-diameter Elk River Loop in two areas for a total of about 3.30 miles in Anoka County, Minnesota;
- Construct about 14.52 miles of 6-inch-diameter tie-over connecting the Paynesville and the Watkins branchlines in Stearns County, Minnesota;
- Install: (a) about 3.07 miles of 4-inch-diameter St. Michael Loop in Wright County, Minnesota; (b) about 5.01 miles of 8-inch-diameter Princeton Loop in Mille Lacs and Sherburne counties, Minnesota; and (c) about 1.96 miles of 4-inch-diameter Monticello Loop in Wright County, Minnesota;
- Modify three meter stations in Anoka County, Minnesota and two meter stations in Wright County, Minnesota; and
- Modify a meter station in St. Croix County, Wisconsin and a meter station in Buffalo County, Wisconsin.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Robert Kopka, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, PR–11.1, 888 First Street, N.E., Washington, DC 20426, (202) 208–0282.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP96–57–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than May 28, 1996, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Robert Kopka, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Robert Kopka, Environmental Project Manager.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11053 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application for Major New License

April 29, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Major New License.

b. Project No.: 1984–056.

c. Date filed: January 25, 1996.

d. Applicant: Wisconsin River Power Company.

e. Name of Project: Petenwell-Castle Rock Project.

f. Location: On the Wisconsin River in Adams, Juneau, and Wood Counties, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Richard L. Hilliker, President, Wisconsin River Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422–3722.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: July 1, 1996.

k. Status of Environmental Analysis: This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The constructed project consists of the following developments:

Petenwell Development

(1) the Petenwell Dam consists of a series of dams and dikes 15,505 feet long and approximately 38 feet high; (2) an impoundment having a surface area of 25,180 acres, with a storage capacity of 495,000 acre-feet at normal water surface elevation of 923.9 feet msl; (3) an intake structure; (4) a powerhouse having 4 generating units having a total installed capacity of 20–MW; (5) a transmission line; and (6) appurtenant facilities.

Castle Rock Development

(1) the Castle Rock Dam consist of a series of dams and dikes 19,374 feet long and approximately 30 feet high; (2) an impoundment having a surface area of 14,900 acres and storage capacity of 136,000 acre-feet at normal water surface elevation of 881.9 feet msl; (3) an intake structure; (4) a powerhouse having 5 generating units having a total installed capacity of 15–MW; (5) a transmission line; and (6) appurtenant facilities.

No additional capacity is being proposed for this project under this new license.

m. Purpose of Project: Project power would be utilized for sale to Wisconsin River Power Company's customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Mr. Richard L. Hilliker, President, Wisconsin River Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422–3722.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a

motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11059 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application for Conduit Exemption

April 29, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Conduit Exemption.

b. Project No.: 11572–000.

c. Date filed: February 8, 1996.

d. Applicant: Roosevelt Water Conservation District.

e. Name of Project: RWCD Conduit.

f. Location: On the RWCD irrigation conduit, near Mesa City, in Maricopa County, Arizona.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Michael O. Leonard, General Manager, Roosevelt Water Conservation District, P.O. Box 100, Higley, AZ 85235.

i. FERC Contact: Michael Spencer at (202) 219–2846.

j. Deadline Date for Protests, Interventions, Terms and Conditions: June 21, 1996.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D4.

l. Description of Project: The proposed project would consist of: (1) a bifurcation attached to the applicant's existing irrigation conduit; (2) a 100-foot-long, 42-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 860 kW and an average annual generation of 6,885 MWh.

m. Purpose of Project: Project power would be used by the applicant.

n. This notice also consists of the following standard paragraphs: A2, A9, B, and D4.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory

Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11060 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–1777–008, et al.]

TransColorado Gas Transmission Company, et al.; Natural Gas Certificate Filings

April 26, 1996.

Take notice that the following filings have been made with the Commission:

1. TransColorado Gas Transmission Company

[Docket No. CP90–1777–008]

Take notice that on April 23, 1996, TransColorado Gas Transmission Company (TransColorado), 12055 West 2nd Place, Lakewood, Colorado 80228 filed in Docket No. CP90–1777–008 a petition to amend the existing authorization issued in Docket Nos. CP90–1777–000, CP90–1777–001, and CP90–1777–006 pursuant to Section 7(c) of the Natural Gas Act, to phase construction of the project and to establish Phase I initial rates, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

On June 3, 1994, TransColorado was authorized in Docket Nos. CP90–1777–000, CP90–1777–001, and CP90–1777–006 (the June order) to construct and operate a new pipeline system extending from an interconnection with Questar Pipeline Company in northwest Colorado to interconnections with El Paso Natural Gas Company (El Paso), Transwestern Pipeline Company (Transwestern), and Public Service Company of New Mexico (Public Service) in the San Juan Basin of northern New Mexico. Specifically, TransColorado, then a partnership including affiliates of Questar, Public Service Company of Colorado and KN Energy Company, was authorized to construct and operate 311 miles of 22-inch and 24-inch pipeline, two compressor stations with a total horsepower of 10,150, and various metering and associated facilities from the Big Hole area of Rio Blanco County, Colorado to a terminus in San Juan County, New Mexico. The June order also authorized initial rates.

TransColorado states that since the June order there have been a number of developments affecting the project. First, an affiliate of El Paso has purchased the partnership interest formerly held by an affiliate of Public Service Company of Colorado. [1] Second, TransColorado has reevaluated the scope and timing of the project to reflect current market considerations. TransColorado states that as a direct result of recent marketing efforts for its pipeline system, it has identified several producers in the San Juan Basin which would benefit from the construction of the TransColorado system on a phased basis. These San Juan Basis producers, it is indicated, are situated in close proximity to a proposed natural gas processing plant to be known as the Coyote Gulch Treating Plant, which will be located in La Plata County, Colorado, approximately 2.5 miles from the southern segment of the proposed TransColorado system. TransColorado states that these producers currently have no outlet for production located in the surrounding Red Cedar producing area since gas volumes being produced are already capacity constrained at the existing Arkansas Loop Plant. Construction of the Coyote Gulch Treating Plant will therefore provide producers in the area with additional natural gas treating capacity which is desired. It is stated that the Coyote Gulch Plant will have a design capacity of up to 120,000 Mcf per day (Mcfd) to remove CO_2 and to dehydrate gas. TransColorado states that by phasing the project, it believes it will be able to secure definitive transportation commitments from many of the area producers.

To implement the restructured project, TransColorado seeks to amend its existing certificate authorization to phase the project. For Phase I, TransColorado proposes to construct and operate:

(1) 2.5 miles of 1″ pipeline and appurtenances, from the proposed Coyote Gulch Treating Plant in La Plata County, Colorado to an interconnection with TransColorado's proposed 24-inch mainline in San Juan County, New Mexico.[2]

(2) 22.5 miles of 24-inch pipeline extending from a point of interconnection with the above 2.5-mile pipeline in San Juan County, New Mexico to a point of interconnection with the existing 34-inch and 42-inch pipelines of El Paso at Valve O in the discharge side or the Blanco Plant in San Juan County, New Mexico.

TransColorado states that it has executed a transportation service agreement with Red Cedar for 75,000 Mcfd of firm transportation capacity on the Phase I facilities. TransColorado states that the estimated cost of the Phase I portion of the project is $14,119,320. TransColorado proposes the following Phase I maximum initial rates.

Reservation Charge:
$1.54321 per dekatherm
Usage Charge (firm):
$0.0322 per dekatherm
Usage Charge (interruptible):
$0.0322 per dekatherm
Unauthorized Overrun Charge:
$0.644 per dekatherm

TransColorado states that the proposed Phase I rates will recover the cost of service for the Phase I facilities, assuming a design capacity of 120,000 Mcfd. TransColorado asserts that it will be at risk for any undersubscription of the available capacity if all capacity is not contracted on a firm basis by the time TransColorado commences service. TransColorado explains that the design of the rates for the Phase I facilities conforms to the June order and the October 18, 1994, rehearing order as to, among other things, stipulated load factors, capital structures, and use of the ''Ozark'' methodology. TransColorado states that the only items which have been adjusted are an increase in the federal income tax rate and a change in property taxes to include only the state of New Mexico.

Comment date: May 17, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP96–262–001]

Take notice that on April 22, 1996, Texas Gas Transmission Company (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP96–262–001 an

[1] For purposes of the Phase I portion of the project, the partnership will consist of just two partners: KN TransColorado, Inc. and El Paso TransColorado Company.

[2] TransColorado asserts that the 2.5-mile facility could be constructed as an eligible gas supply facility under Section 157.208(a) of the Commission's Regulations in accordance with TransColorado's Subpart F blanket certificate. However, as a convenience, TransColorado has sought authority to construct the facility in this docket.

amendment to its request filed on March 19, 1996, pursuant to Sections 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to add a new delivery point in Henderson County, Kentucky, to serve Western Kentucky Gas Company (Western), a local distribution company, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas' original request of March 19, 1996, request authority to construct and operate a new delivery point on Texas Gas' Slaughters-Evansville 10-inch Line in Henderson County, Kentucky, to enable Western to render natural gas service to a new customer, Hudson Foods, Inc. (Hudson-Sebree Delivery Point). Such request was noticed on March 22, 1996, with the required 45-day notice period expiring on May 6, 1996.

Texas Gas states that Hudson Foods, Inc. (Hudson), has constructed a protein/processing poultry plant outside of Sebree, Kentucky, for which Western requested the delivery tap from Texas Gas, which is the subject of the instant request. According to Western and Hudson, construction on the plant site has proceeded ahead of schedule and the plant site will be ready to receive natural gas service by Monday, April 22, 1996. Texas Gas further states that Hudson has represented that a delay in Hudson's plant operations due to lack of natural gas service could potentially impact hundreds of jobs and create financial hardship not only for Hudson but ''many of its employees.'' Texas Gas states that for this reason Western requested that upon receipt of the necessary environmental clearances that Texas Gas proceed as quickly as possible to construct the delivery point pursuant to the authority of Section 311 of the Natural Gas Policy, but that Texas Gas continue to pursue the authority to operate the point pursuant to its blanket certificate issued under Section 7 of the Natural Gas Act. Texas Gas states that it received environmental clearances on April 18, 1996.

By this amendment, Texas Gas states that it hereby seeks authority to operate the Hudson-Sebree Delivery Point under the authority of its blanket certificate issued under Section 7 of the Natural Gas Act.

Comment date: June 10, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP96–275–001]

Take notice that on April 18, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP96–275–001 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to abandon obsolete facilities and to construct and operate replacement facilities at the Filer Meter Station in Twin Falls County, Idaho under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to amend its filing in Docket No. CP96–275–000. In that filing Northwest proposed to replace the existing obsolete two 1-inch regulators with two new 1-inch regulators and the existing 2-inch positive displacement meter with a new 2-inch turbine meter and appurtenances.

Northwest states that due to mechanical problems that they have been experiencing with 2-inch turbine meters Northwest now proposes to install a new 3-inch turbine meter as a replacement. As a result of this change the maximum design capacity of the meter station will increase to approximately 1,550 Dth per day. Northwest states that all other pertinent information as stated in Docket No. CP96–275–000 remains accurate as previously filed.

Comment date: June 10, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Gas Transport, Inc.

[Docket No. CP96–309–000]

Take notice that on April 10, 1996, Gas Transport, Inc. (GTI) filed an application in Docket No. CP96–309–000 pursuant to Section 7(c) of the Natural Gas Act, and Subpart A of Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing it to replace an existing compressor and install and operate a new compressor and the necessary facilities on its transmission line, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

GTI proposes to install a 115 horsepower compressor and the necessary regulation facilities on its transmission line in Wood County, West Virginia. GTI states that these facilities will enable it to more effectively serve its market demand and reduce its cost-of-service to its customers. The estimated costs associated with this proposal will amount to $222,250. GTI will recover the costs through internally generated funds.

In addition, GTI seeks authorization to remove a 360 horsepower compressor on its existing facilities and replace the unit with a 115 horsepower compressor. The removal and replacement of the existing compressor is in Washington County, Ohio. The estimated costs associated with this proposal will amount to $166,000. GTI will recover the costs for this facility through internally generated funds.

Comment date: May 17, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation, Southern Natural Gas Company

[Docket No. CP96–332–000]

Take notice that on April 17, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, herein referred to as Applicants, filed in Docket No. CP96–332–000, a joint abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for an order granting permission and approval to abandon two exchange and transportation agreements between the Applicants, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that the exchange and transportation agreements are governed by Rate Schedules X–38 and X–87 for Texas Eastern and X–13 and X–39 for Southern. Applicants further state that the exchange and transportation agreements are no longer needed to exchange gas on an emergency basis and the facilities will no longer be utilized.

Comment date: May 17, 1996, in accordance with Standard Paragraph F at the end of this notice.

6. ANR Pipeline Company

[Docket No. CP96–337–000]

Take notice that on April 18, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an abbreviated application for a certificate of public convenience and necessity authorizing a revised

storage field boundary for its Loreed Storage Field located in Lake and Osceola Counties, Michigan, pursuant to Section 7(c) of the Natural Gas Act and Section 157.7 of the Federal Energy Regulatory Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that is requesting approval of the proposed storage field boundary because there has been a gradual expansion of the storage reservoir over the years, and the grant of authority sought will help ANR to acquire, through eminent domain if necessary, the property it needs to protect the integrity of the Loreed Storage Field and the gas stored therein. ANR also states that approval of the proposed boundary of Loreed Storage Field will not increase the storage capacity or the deliverability of the field. ANR estimates that the cost of storage and mineral rights will be $357,125.

Comment date: May 17, 1996, in accordance with Standard Paragraph F at the end of this notice.

7. NorAm Gas Transmission Company

[Docket No. CP96–342–000]

Take notice that on April 22, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–342–000 an application pursuant to Section 7(c) of the Natural Gas Act to continue operating the Dunn Junction compressor station in Logan County, Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT states that on July 23, 1987, in Docket No. CP87–458, NGT filed an application to certificate, among other things, existing facilities that were originally constructed and operated as non-jurisdictional intrastate facilities. NGT further states that on June 8, 1989, the Commission issued an order authorizing the continued operation of these facilities; however, although the need for certification for the Dunn Junction compressor station was described in the body of the 1987 application, due to an administrative oversight, Dunn Junction was not specifically highlighted as a facility requiring certification on the exhibits accompanying the application. Therefore, in order to prevent any ambiguity as to the status of the Dunn Junction compressor station, NGT requests an order authorizing the operation of the station as a jurisdictional facility.

Comment date: May 17, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10990 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. PL94–4–001]

Pricing Policy For New and Existing Facilities Constructed by Interstate Natural Gas Pipelines; Order Denying Rehearing

Issued: April 29, 1996.

On May 31, 1995, the Commission issued a Statement of Policy (Policy Statement) on the approach the Commission intended to follow in establishing rates for new construction of pipeline facilities.[1] The Policy Statement focused on whether projects would be priced on a rolled-in basis (rolling-in the expansion costs with the existing facilities) or an incremental basis (establishing separate cost-of-services and separate rates for the existing and expansion facilities). The Policy Statement provided that a preliminary determination of rate design would be made when the pipeline filed its certificate application for the project. Fourteen parties seek rehearing and clarification of the Policy Statement.[2]

Summary of the Requests for Rehearing and Clarification

Some parties contended the Policy Statement did not adopt a sufficiently strong presumption in favor of rolled-in rates. Others raised questions about how the presumption will operate, i.e., is it a bright-line test, how will the rate impact be determined in specific cases, and how thoroughly will the Commission review projects that meet the presumption? The parties also raised questions about how the Commission will weigh the system-wide benefits against the rate impact. In particular, some parties suggested the Commission should not consider several of the types of system-wide benefits which the Commission identified in the Policy Statement.

The parties similarly raised questions about how the Commission will

[1] Pricing Policy For New And Existing Facilities Constructed By Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995).

[2] Alberta Department of Energy; American Forest and Paper Association; Fuel Managers Association; Great Lakes Gas Transmission Limited Partnership; JMC Power Projects; Midland Cogeneration Venture Limited Partnership; Natural Gas Supply Association; Northern Illinois Gas Company; Public Service Electric and Gas Company; Selkirk Cogen Partners, L.P.; UGI Utilities, Inc.; United Distribution Companies; Viking Gas Transmission Company; Washington Natural Gas Company.

determine whether mitigation of rate impact is needed and how the mitigation will be done. Some argued that no mitigation is needed when the benefits are proportionate to the rate impact, while others argued mitigation should apply in every instance when the rate impact exceeds 5%.

Finally, the parties raised questions about the procedures for addressing rate design questions in certificate proceedings. They requested clarification as to the role of shippers in the certificate proceedings, such as whether the shippers will be able to present evidence opposing the pipelines' proposed rate design. They also raised questions about how the declaratory order will be applied in subsequent rate cases under section 4 of the Natural Gas Act when pipelines propose rolled-in pricing.

Discussion

The purpose of the Policy Statement was to provide the industry with guidance on the criteria the Commission would apply when evaluating rate design for new pipeline construction and to establish the procedures for making this analysis. In the Policy Statement, the Commission contemplated that the resolution of pricing methodology would take place in individual proceedings based on the facts and circumstances of the project at issue.[3] The Commission finds that the issues raised in the rehearing requests generally are not susceptible to a generic resolution, but need to be considered in the context of a specific filing. Indeed, since issuing the Policy Statement, the Commission has addressed some of these issues in individual cases.[4] Accordingly, the Commission declines to consider the issues raised in the requests for rehearing and/or clarification in this docket, but will consider such issues and arguments in the specific cases in which they apply.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11047 Filed 5–2–96; 8:45 am]

BILLING CODE 6717–01–M

[3] 71 FERC at 61,915.

[4] *See, e.g.*, CNG Transmission Company, 74 FERC ¶ 61,073 (1996); Paiute Pipeline Company, 74 FERC ¶ 61,049 (1996); Northwest Pipeline Company, 73 FERC ¶ 61,353 (1995), *reh'g denied*, 75 FERC ¶ 61,008 (1996); El Paso Natural Gas Company, 73 FERC ¶ 61,352 (1995); Southern Natural Gas Company, 73 FERC ¶ 61,085 (1995); Texas Eastern Transmission Corporation, 73 FERC ¶ 61,012 (1995).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5469–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed April 22, 1996 through April 26, 1996 pursuant to 40 CFR 1506.9.

EIS No. 960190, DRAFT EIS, FHW, WI, Burlington Bypass State Trunk Highway Project, Construction, from WI–36, WI–11 and WI–83, Funding and COE Section 404 Permit, City of Burlington, Racine and Walworth Counties, WI, Due: June 24, 1996, Contact: Richard Madrzak (608) 829–7510.

EIS No. 960191, FINAL EIS, BLM, CA, Clear Creek Management Area, Land and Resource Management Plan Amendment, Implementation, San Benito and Fresno Counties, CA, Due: June 03, 1996, Contact: Meg Pearson (408) 637–8183.

EIS No. 960192, FINAL EIS, FAA, NY, Syracuse Hancock International Airport, Land Acquisition and Construction of Runway 10 L–28R, Funding and Airport Layout Plan Approval, Onondaga County, NY, Due: June 03, 1996, Contact: Frank Squeglia (718) 553–3325.

EIS No. 960193, DRAFT EIS, COE, NJ, Absecon Island Interim Feasibility Study, Storm Damage Reduction, Brigantic Inlet to Great Egg Harbor Inlet, Atlantic County, NJ, Due: June 25, 1996, Contact: Ltc. Robert Magnifico (215) 656–6555.

EIS No. 960194, DRAFT EIS, FHW, FL, Port of Miami Tunnel and Access Improvements, I–395 via MacArthur Causeway Bridge, Dade County, FL, Due: June 17, 1996, Contact: J. R. Skinner (904) 942–9582.

EIS No. 960195, FINAL SUPPLEMENT, COE, CA, Richmond Harbor Deep Draft Navigation Improvements, Updated and Additional Information, to Improve Navigation Efficiency into the Potrero, San Francisco Bay, Contra Costa County, CA, Due: June 03, 1996, Contact: Linda Ngim (415) 744–3341.

EIS No. 960196, DRAFT EIS, USN, United States Navy Shipboard Solid Waste Disposal, Implementation, MARPOL Special Areas: Designation Baltic Sea, North Sea, Wilder Caribbean, Antarctic Ocean, Mediterranean Sea, Black Sea and Red Sea, Gulf Regions: Persian Gulf and Gulf of Oman, Due: June 17, 1996, Contact: Robert K. Ostermueller (610) 595–0759.

EIS No. 960197, FINAL SUPPLEMENT, IBR, NM, CO, Animas-La Plata Project, Additional Information concerning Agricultural, Municipal and Industrial Water Supplies, Animas and La Plata Rivers, San Juan County, NM and La Plata and Montezuma Counties, CO, Due: June 03, 1996, Contact: Ken Beck (970) 385–6558.

EIS No. 960198, FINAL EIS, DOE, NM, Medical Isotopes Production Project (MIPP), Establishment and Production of a Continuous Supply of Molybdenum-99 and Related Isotopes, Bernalillo County, NM, Due: June 03, 1996, Contact: Wade Carroll (301) 903–7731.

EIS No. 960199, FINAL EIS, USN, WA, Disposal of Decommissioned, Defueled Cruiser, Ohio Class and Los Angeles Class Naval Reactor Plants, Site Selection, U.S. Department of Energy's Hanford Site, Benton, Franklin and Grant Counties or Puget Sound Naval Shipyard, Bremerton, WA, Due: June 03, 1996, Contact: John Gordon (360) 476–7111.

EIS No. 960200, FINAL EIS, DOE, WA, Adoption—Disposal of Decommissioned, Defueled Cruiser, Ohio Class and Los Angeles Class Naval Reactor Plants, Site Selection, U.S. Department of Energy's Hanford Site, Benton, Franklin and Grant Counties or Puget Sound Naval Shipyard, Bremerton, WA, Due: June 03, 1996, Contact: Paul F.X. Dunigan (509) 376–6667.

The U.S. Department of Energy (DOE), has adopted the U.S. Department of the Navy's FEIS #960199, filed with the Environmental Protection Agency on 04–26–96. DOE is a cooperating agency on this project. Recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

Amended Notices

EIS No. 960007, DRAFT EIS, GSA, DC, Central and West Heating Plants (CHP/WHP) Construction and Operation, Air Quality Improvement Project, District Heating System (DHS), City of Washington, DC, Due: May 24, 1996, Contact: Frank L. Thomas (202) 708–5334. Published FR 01–19–96—Review Period Extended.

EIS No. 960115, DRAFT EIS, FHW, RI, Rhode Island Northeast Corridor Freight Rail Improvement Project, Major Investment Study, Implementation, Boston Switch in Central Falls to the Quonset Point/Davisville Industrial Park in North Kingtown, Funding, COE Section 10 and 404 Permits, Providence County, RI, Due: May 13, 1996, Contact: K. Robert Sikora (401) 528–4541.

Published FR 03–15–96—Review Period Extended.

EIS No. 960159, FINAL EIS, FAA, WI, Dane County Regional Airport, Air Carrier Runway 3–21 Construction and Operation and Associated Actions, Airport Layout Plan Approval and Funding, Dane County, WI, Due: June 03, 1996, Contact: John Dougherty (612) 725–4362. Published FR 04–12–96—Review Period Extended.

Dated: April 30, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–11131 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5469–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 15, 1996 Through April 19, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–COE–D39036–DE Rating EC2, Delaware Coast from Cape Henlopen to Fenwick Island Feasbility Study, Rehoboth Beach and Dewey Beach Project, Storm Damage Reduction, Sussex County, DE.

Summary: EPA expressed environmental concerns regarding the need for updated information on the biological recovery of the borrow areas and the criteria used in selection of the preferred plan of beach restoration for storm damage.

ERP No. D–COE–E36174–FL Rating EC2, Programmatic EIS—Florida's Everglades, Stormwater Treatment Areas Construction Project, NPDES and COE Section 404 Permits, Implementation, Lake Okeechobee, Palm Beach and Hendry Counties, FL.

Summary: EPA expressed environmental concerns over the performance capabilities of the proposed stormwater treatment areas, and requested additional information concerning impacts to wetlands and water quality.

ERP No. D–COE–E40764–00 Rating LO/EC2 Fort Campbell Rail Connector, Construction between the Government-Owned Line Railroad and CSX Line, Hopkinsville and Clarkville, Christian Co., KY and Montgomery and Stewart Counties, TN.

Summary: EPA had no objection to Alternative 3, but expressed concerns with the other alternatives presented in the draft EIS. In particular, EPA was concerned how their implementation would affect wetland/wildlife habitat, and requested additional information.

ERP No. D–COE–G39029–LA Rating EC2, Programmatic EIS—Marsh Management Project, Hydrologic Manipulation, COE Section 10 and 404 Permit Issuance, Coastal Wetland of Louisiana a part of the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) River Basins, LA.

Summary: EPA expressed environmental concerns over the proposal and requested additional information. Information needed in the Final EIS include: 1) the development and full consideration of the document's objectives, 2) clarification in the development of future scenarios of marsh management projects, and 3) consideration of cumulative and secondary impacts.

ERP No. D–FRC–C02000–PR Rating EC2, Eco Ele'ctrica Liquefied Natural Gas (LNG) Import Terminal and Electric Cogeneration Project Construction and Operation, Permits and Approvals, Guayanilla Bay, PR.

Summary: EPA expressed environmental concerns regarding the project's potential impacts to water quality, aquatic resources, public safety, and existing site contamination. EPA also requested that additional information be provided in the final EIS to address these issues.

ERP No. D–FRC–E05047–GA Rating EC2, North Georgia Hydroelectric Project, (FERC. No. 2354–018) Issuance of Relicensing, Savannah River Basin, Tallulah, Tugalo and Chattooga Rivers, GA and SC.

Summary: EPA expressed environmental concerns with the proposed project, and requested additional information.

ERP No. D–IBR–K39039–NV Rating EC2, Southern Nevada Water Authority Treatment and Transmission Facility, Construction and Operation, Issuance of Permits, Right-of-Way Grants and Modification of existing Water Delivery/Service Contracts, Clark County, NV.

Summary: EPA expressed environmental concerns regarding impacts of wastwater return flows on water quality in Las Vegas Bay and Lake Mead and on wetlands habitat in Las Vegas Wash. EPA requested additional consideration of water conservation measures.

ERP No. D–SCS–K36115–HI Rating EC2, Upcountry Maui Watershed, Implementation, To Address Agricultural Water Shortage, COE Section 404 Permit, Makawao District, Island of Maui, Maui County, HI.

Summary: EPA expressed environmental concerns over potential impacts to wildlife and riparian habitat due to construction of new reservoirs to provide new irrigation. EPA recommended that the FEIS include a more complete description of the environmental impacts of the action, mitigation measures and alternatives.

ERP No. DS–COE–C36062–00 Rating EC2, Passaic River Basin Flood Control Plan, Implementation, Updated Information to extend tunnel outlet from Upstream Terminus to Newark Bay, Passaic, Bergen, Morris, Essex and Hudson Counties, NJ and Rockland and Orange Counties, NY.

Summary: EPA expressed environmental concerns regarding the feasibility of the proposed wetland mitigation, construction related water quality impacts, as well as local economic impacts. EPA has requested that additional information be provided in the final supplemental EIS to address these issues.

FINAL EISs

ERP No. FS–COE–G32051–TX Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Additional Information, Funding and Implementation, Galveston and Harris Counties, TX.

Summary: EPA had no objections to the recommended plan.

Dated: April 30, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–11132 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5466–8]

Science Advisory Board; Notice of Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that various committees and subcommittees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific

meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office. [*Important Note*: This notice contains announcements of one meeting of the Agency's Council on Clean Air Compliance Analysis (CCACA) and one meeting of one of its subcommittees. The CCACA was created under the provisions of Section 812 of the Clean Air Act Amendments of 1990 (42 USC 7401 et seq.), and has been administratively housed within the Agency's Science Advisory Board (SAB). Although chartered as the Council on Clean Air Compliance Analysis (CCACA), it has been customary for the Science Advisory Board to refer to this advisory body as the Clean Air Act Compliance Analysis Council (CAACAC). To prevent any confusion over the activities of this advisory group, it will henceforth be identified only as the Council on Clean Air Compliance Analysis (CCACA).]

(1) Radiation Advisory Committee (RAC): The Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet on May 21 and 22, 1996 at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202 (tel. 703–549–3434), from 9:00 am to 5:00 pm on Tuesday, May 21, 1996; and from 8:30 am to 5:00 pm on Wednesday, May 22. The topics include: (a) review and closure discussion on the RAC's Commentary on the International Commission on Radiological Protection (ICRP) Lung Model; (b) briefings from the Office of Radiation and Indoor Air (ORIA) staff on: the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), ORIA's Radiation Science Laboratory located in Las Vegas, Nevada, current radon activities and radon proficiency programs, and emergency response activities, as well as an ORIA program update, and other discussions with ORIA staff as time allows; and (c) it is also planned that the RAC will also have discussions of other SAB special initiatives, such as the Integrated Risk Project (IRP), Futures II and Environmental Goals.

Regarding the ICRP Lung Model discussion, the RAC will have discussed this topic at its publicly advertised teleconference on Tuesday, April 30, 1996 (See 61 FR 15254–15255, April 5, 1996). The RAC is planning to reach closure on its draft commentary (*Commentary on the Scientific Basis for Apportioning of Risk Among the ICRP Publication 66 Regions of the Respiratory Tract*, draft dated March 27, 1996) concerning the new ICRP Human Respiratory Tract Model for Radiological Protection. The new ICRP model was designed to accommodate the potentially large differences in the doses received and in the radiation sensitivities of the various tissues comprising the respiratory tract, as well as being compatible with the ICRP dosimetry system.

For Further Information: (a) To obtain a copy of the draft RAC ICRP Lung Model Commentary or agenda for the meeting, please contact Ms. Diana Pozun, Secretary, SAB, U.S. EPA, 401 M Street, SW, Washington, DC 20460, or tel. (202)–260–6552, FAX (202)–260–7118, or Internet at pozun.diana@epamail. epa.gov.; (b) For technical questions on the ICRP Lung Model commentary, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, U.S. EPA, Science Advisory Board (1400F), U.S. EPA, 401 M Street, SW; Washington, DC 20460, or tel. (202)–260–2560, FAX (202)–260 7118, or Internet at kooyoomjian.jack @epamail.epa.gov.; (c) For questions on any of the ORIA activities to be discussed with the SAB/RAC, please contact Dr. Mary Clark (Tel. 202–233–9348; FAX 202–233–9651) or Mr. Brian Littleton (Tel. 202–233–9216; FAX 202–233–9651) at the Office of Radiation and Indoor Air (ORIA), Mail Code (6601J), U.S. EPA, Washington, DC 20460; (d) Members of the public who wish to make a brief oral presentation at the meetings or those who wish to provide formal written comment should contact Mrs. Pozun in writing or via fax no later than May 14, 1996 in order to have time reserved on the agenda.

(2) The Physical Effects Review Subcommittee (PERS) of the Council on Clean Air Compliance Analysis (CCACA): The Subcommittee will meet from 9:00 am to no later than 6:00 pm on June 4, 1996 at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314 (tel. 703–684–5900). The purpose of the meeting is to review the physical effects aspects of the Agency's Draft Report to Congress, entitled *The Benefits and Costs of the Clean Air Act, 1970 to 1990; Report to Congress,* USEPA, dated May 1996. The last public meeting of the Subcommittee on this topic occurred on May 18, 1995. Its parent Committee, the CCACA, met on June 12 and 13, 1995 to conduct a closure discussion on the Agency's program at that point in time. (See 60 FR 20491–20492, April 16, 1995).

The Agency Staff will conduct presentations and may provide additional draft documents and briefing materials relating to this topic. The focus of this Subcommittee review is the adequacy of the incorporation of the draft physical effects documents pertaining to Section 812 of the Clean Air Act (CAA) into the draft Report to Congress. Specifically, the Subcommittee will be reviewing the data, methodologies, and results of the physical effects modeling components of the Section 812 Retrospective Study as manifest and documented in the draft Report to Congress.

For Further Information: (a) To obtain single copies of the draft documents pertaining to this review, please contact Ms. Eileen Pritchard, Secretary, U.S. Environmental Protection Agency, Office of Policy, Planning and Evaluation (OPPE), Economic Analysis and Innovation Division (Mail Code 2127), 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–8465; FAX (202) 260–6405, or Internet at pritchard.eileen@epamail.epa.gov.; (b) To discuss technical aspects of the draft documents provided to either the Subcommittee (PERS) or the CCACA, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or Internet at democker.jim@epamail.epa.gov.; (c) To discuss economic aspects of the draft documents provided to either the Subcommittee (PERS) or the CCACA, please contact Mr. Thomas Gillis, Office of Policy, Planning and Evaluation (OPPE) (Mail Code 2127), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–4181; FAX (202) 260–5732, or Internet at gillis.thomas@epamail.epa.gov.; (d) To obtain copies of the agenda for this meeting, please contact Mrs. Diana L. Pozun, Secretary, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Tel. (202) 260–6552; FAX (202) 260–7118; or via the Internet: pozun.diana@epamail.epa.gov. To discuss technical aspects of the reviews, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Radiation Advisory Committee, Tel. (202) 260–2560; FAX (202) 260–7118; or via the Internet: kooyoomjian.jack@epamail.epa. gov.; (e) Members of the public who wish to make a brief oral presentation at the Subcommittee meeting must contact Mrs. Pozun in writing or via fax no later than May 28, 1996 in order to have time reserved on the agenda.

(3) Council on Clean Air Compliance Analysis (CCACA): The Council will meet on Wednesday and Thursday, June 5 and 6, 1996 at the Embassy Suites

Hotel, 1900 Diagonal Road, Alexandria, VA 22314 (tel. 703–684–5900). The meeting will take place from 9:00 a.m. to no later than 6:00 p.m. on June 5th, and from 8:30 a.m. to no later than 5:00 p.m. on June 6th. At this meeting, the Council will: (a) review the Draft Report to Congress, entitled *The Benefits and Costs of the Clean Air Act, 1970 to 1990; Report to Congress,* USEPA, dated May 1996; (b) review the key findings and recommendations of it's Subcommittee on Physical Effects (PERS); (c) review the key findings and recommendations of the Clean Air Scientific Advisory Committee's (CASAC's) Air Quality Models Subcommittee (CASAC/AQMS), which is conducting a review of the air quality modeling aspects of the CAA Section 812 study on behalf of the Council; and (d) discuss the topic of the prospective study on costs and benefits, which the Agency is expected to introduce at this meeting.

The CASAC/AQMS met on April 26, 1996 via teleconference (See 61 FR 15254–15255, April 5, 1996) to discuss the air quality models aspects of this exercise. The charge to the AQMS was to review the analytical methodologies, data sources, implementation, and results of the air quality modeling component of the Section 812 Retrospective Analysis, and provide advice to the CCACA regarding the reasonableness, technical merits, and appropriate interpretations of the modeling results. The AQMS formally began to review air quality models as a component of the Clean Air Act (CAA) Section 812 Benefit-Cost Study in a series of public teleconferences on October 1, 1993 and October 21, 1993 (See 58 FR 49297–49298, September 22, 1993) with a follow-up review meeting on December 2, 1993 (See 58 FR 49297, September 22, 1993, and 58 FR 60628, November 17, 1993).

For Further Information: (a) To obtain single copies of the draft documents, please contact Ms. Eileen Pritchard, Secretary, U.S. Environmental Protection Agency, Office of Policy, Planning and Evaluation (OPPE), Economic Analysis and Innovation Division (Mail Code 2127), 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–8465; FAX (202) 260–6405, or Internet: pritchard.eileen@epamail.epa.gov.; (b) To discuss technical aspects of the draft documents provided to the PERS or the CCACA please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via the Internet at: democker.jim@epamail. epa.gov.; (c) To discuss economic aspects of the draft documents provided to either the Subcommittee (PERS) or the CCACA, please contact Mr. Thomas Gillis, Office of Policy, Planning and Evaluation (OPPE) (Mail Code 2127), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–4181; FAX (202) 260–5732, or Internet at: gillis.thomas@epamail.epa.gov.; (d) To obtain copies of the agenda for the above meeting, please contact Mrs. Diana L. Pozun, Secretary, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; Tel. (202) 260–6552; FAX (202) 260–7118; or via the Internet: pozun.diana@epamail.epa. gov.; (e) To discuss technical aspects of the review, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Council on Clean Air Compliance Analysis, Tel. (202) 260–2560; FAX (202) 260–7118; or via the Internet: kooyoomjian.jack@epamail.epa.gov.; (f) Members of the public who wish to make a brief oral presentation at the meeting must contact Mrs. Pozun in writing or via fax no later than May 28, 1996 in order to have time reserved on the agenda.

(4) Ecological Processes and Effects Committee: The Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will meet on May 21–23, 1996, at the Environmental Protection Agency's Waterside Mall Complex, 401 M Street, SW., Washington, DC 20460 in Room M2103. For convenient access, members of the public should use the EPA entrance next to the Safeway store. The meeting will begin at 8:30 a.m. on May 21 and at 8:00 a.m. on May 22 and May 23, and end no later than 5:00 p.m. on each day.

The main purpose of the meeting is to: (a) Discuss ecological risks and the potential for risk reduction as part of the SAB project to update the 1990 SAB report, *Reducing Risk: Setting Priorities and Strategies for Environmental Protection;* and (b) engage in a consultation with Agency staff on the appropriate role of ecological criteria in regulatory and management programs. The Committee may also receive briefings on Agency programs or upcoming review topics.

Background on the Integrated Risk Project: In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (1) Develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (2) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (3) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (4) identify the uncertainties and data quality issues associated with the relative rankings. The project will be conducted by several SAB panels, including EPEC, working at the direction of an ad hoc Steering Committee established by the Executive Committee.

Single copies of *Reducing Risk* can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW., Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Constance Valentine, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW., Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via The INTERNET at: Valentine.Connie@EPAMAIL.EPA.GOV.

Anyone wishing to make an oral presentation at the meeting should contact Stephanie Sanzone, Designated Federal Official for EPEC, no later than 4:00 p.m., May 15, 1996, at (202) 260–6557 or via the Internet at Sanzone.Stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Ms. Sanzone no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

Providing Oral or Written Comments at SAB Meetings: The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment at meetings will be usually limited to five minutes per speaker and no more than thirty minutes total. Teleconference comments are generally limited to three minutes each, and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the respective committee or subcommittee

prior to its meeting; comments received too close to the meeting date will normally be provided to the committee or subcommittee at its meeting, except for teleconferences, where brief written materials may be FAXed to the participants, with more detailed or lengthy materials received too close to the teleconference to be mailed to the subcommittee or committee participants shortly after the teleconference. Written comments may be provided up until the time of the meeting.

Dated: April 25, 1996.

John R. Fowle III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 96–11075 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5466–7]

Clean Air Scientific Advisory Committee, Science Advisory Board; Notification of Public Advisory Committee Meeting

May 16–17, 1996.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on Thursday and Friday, May 16 and 17, 1996. On May 16th, the meeting will be held at the Omni Europa Hotel, One Europa Drive, Chapel Hill, NC, 27514. The hotel phone number is (919) 968–4900. On May 17th, the meeting will be held at the USEPA, Main Auditorium, Environmental Research Center (ERC), corner of Route 54 and Alexander Drive, Research Triangle Park, NC 27711. The meeting will begin at 8:30 a.m. and end no later than 5:00 p.m. on both days (times noted are Eastern Time). The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come first-serve basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning document availability from the relevant Program area is included below. *See 60 FR 62089–62090 for further information.*

Purpose of the Meeting

At this meeting, the Committee will review and provide advice to EPA on the draft staff paper for particulate matter (*Review of National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information*). The purpose of the staff paper is to evaluate and interpret the most relevant scientific and technical information reviewed in the air quality criteria document in order to better specify the critical elements which the EPA staff believes should be considered in any possible revisions to the national ambient air quality standards (NAAQS) for particulate matter. This document is intended to bridge the gap between the scientific review contained in the criteria document and the judgments required of the Administrator in setting a NAAQS. The Committee will also review draft the technical support document: *A Particulate Matter Risk Analysis for Philadelphia and Los Angeles.* The Committee will consider presentations from Agency staff and the interested public prior to making recommendations to the Administrator.

Availability of Review Materials

(a) *Review of National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (The Draft Staff Paper)*—Single copies of the draft particulate matter staff paper may be obtained from Ms. Tricia Crabtree, Office of Air Quality Planning and Standards (MD–15), U.S. EPA, Research Triangle Park, NC 27711. Ms. Crabtree can also be reached by telephone at (919) 541–5655 or by fax at (919) 541–0237. The Office of Air Quality Planning and Standards (OAQPS) will accept written comments from the public on all aspects of their revised external review draft particulate matter staff paper through June 7, 1996. Written comments should be sent to Dr. Jane Caldwell at address stated above.

This draft document will also be available on the Agency's TTN Bulletin Board (reachable via modem on (919) 541–5742). To access the TTN Bulletin Board, a modem and communications software will be necessary. The terminal emulation needs to be VT100, VT102 or ANSI. The following parameters on the communications software are required: Data bits–8; Parity–N; and Stop Bits–1. The document will be located under the Clean Air Act Amendments BBS under Title I, Policy and Guidance. For INTERNET access—go to Telenet Site and enter TTNBBS.RTPNC.EPA.GOV or IP Number 134.67.234.17. For INTERNET, we do not have FTP to download documents. Requester must have Kermit Protocol Program or pay a fee for SLIP account for downloading capabilities. Once in the TTN Bulletin Board, you must register (there is no charge for this). At the prompt for name, you should enter your name; at the prompt for password, make up a password (8 characters); select registration and enter registration information including company name. Then follow instructions. For assistance in assessing the draft materials, please contact the Help Desk at (919) 541–5384 in Research Triangle Park, NC. To arrange for copies of specific figures/graphs, not adequately reproduced with the TTN Bulletin Board, contact Ms. Trish Crabtree at the previously stated location/phone number.

(b) *A Particulate Matter Risk Analysis for Philadelphia and Los Angeles.*—Single copies of this draft document will be available from Ms. Tricia Crabtree (see above). The OAQPS will accept written comments from the public on both documents through June 7, 1996. Written comments should be sent to Mr. Eric Smith at the above address.

For Further Information

Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Official, Clean Air Scientific Advisory Committee, Science Advisory Board (1400F), U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via the INTERNET at FLAAK.ROBERT@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda should contact Ms. Dorothy Clark at (202) 260–6552 or by FAX at (202) 260–7118 or via the INTERNET at CLARK.DOROTHY @ EPAMAIL.EPA.GOV. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–8414.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Friday, May 10, 1996 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its

meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment are limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments of any length (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of its meeting, unless other publicly announced arrangements have been made.

Dated: April 23, 1996.

John R. Fowle, III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 96–11076 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–64029; FRL 5367–4]

Propargite; Voluntary Deletion of Ten uses in Response to EPA's Concerns of Risk from Dietary Exposure to the U.S. Population

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Request to Delete Uses.

SUMMARY: This notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136d(f)(1), announces EPA's receipt of a request from Uniroyal Chemical Company to delete 10 uses from its propargite labels. EPA invites public comment on the proposed use deletions.

DATES: Public comment on the use deletions will be accepted until July 2, 1996.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [OPP–64029]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review Branch, Special Review and Reregistration Division (7508W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8029; e-mail: morris.jeff@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

EPA determined that long-term exposure to propargite (trade names Omite, Ornamite, and Comite), a pesticide registered in 1969 for the control of mites on a number of agricultural commodities and ornamental plants, posed an unacceptable dietary cancer risk to persons who consumed propargite-treated foods. EPA classifies propargite as a B_2 (probable) human carcinogen. EPA's risk assessment estimates overall dietary risk to the U.S. general public from exposure to all propargite uses (including the 10 uses that Uniroyal has now deleted from its labels) at 1.6×10^{-5} This was based on an intensive dietary assessment that includes exposure estimates based on actual residues found in foods. The commodities with the largest contributions to the overall risk are apples at 9.2×10^{-6}, and peaches at 2.5×10^{-6}. Accordingly, based on the foregoing information as well as information on the benefits of propargite use, EPA determined that continued use of propargite products would cause unreasonable adverse effects. However, based on a voluntary agreement reached with Uniroyal, which includes the deletion of the apple and peach uses, EPA believes the overall dietary risk has been reduced to a level that EPA considers negligible.

II. Uniroyal Request to Amend Registrations

EPA discussed its risk findings with Uniroyal Chemical Company, the sole propargite registrant, and Uniroyal responded by agreeing in an April 5, 1996 letter to EPA to amend propargite product labels with EPA registration numbers 400–82, 400–83, 400–89, 400–104, 400–154, 400–426, and 400–427 to delete the following uses: apples, apricots, cranberries, figs, green beans, lima beans, peaches, pears, plums (including plums grown for prune production), and strawberries. These proposed use deletions are the subject of the Notice. Uniroyal further requested that its propargite registrations be immediately amended to incorporate a number of new terms and conditions. These amended terms and conditions (reproduced in section IV below) were accepted by EPA and made immediately effective as of April 5, 1996.

III. Deletions Pursuant to Voluntary Requests, and Opportunity for Public Comment

Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA amend a pesticide registration to delete one or more uses (7 U.S.C. 136d(f)(1)). EPA must publish in the Federal Register a notice of receipt of the request and allow public comment. In accordance with FIFRA section 6(f)(1)(C)(ii), Uniroyal has requested that the 90-day comment period for the proposed deletions be waived. However, the Administrator has determined that a 60-day comment period is appropriate for the proposed action. Accordingly, persons wishing to comment may do so by July 2, 1996. In addition, because propargite is undergoing reregistration, any comments received in response to this notice will be considered in EPA's determination of propargite's eligibility for reregistration.

EPA believes the deletions proposed by Uniroyal in conjunction with the new terms and conditions described below will, in the short term, substantially reduce the risk of unreasonable adverse effects from continued use of products containing propargite. EPA further believes that for most of the uses proposed for deletion there are adequate alternative products and pest control practices available as substitutes for propargite products. For these uses and those for which alternatives are not available, EPA has determined that potential economic loses are outweighed by the risks posed by continued use. It is EPA's intention to uphold Uniroyal's request for deletion of the specified uses unless during the comment period convincing information is received that demonstrates that approval of Uniroyal's request is inappropriate. Based on the large and persuasive record already assembled regarding the

risks and benefits of propargite, the Agency believes its proposed decision to accept Uniroyal's deletions is well supported.

IV. New Terms and Conditions for Propargite Products

As indicated above, in addition to requesting deletion of certain propargite uses, Uniroyal by letter dated April 5, 1996, also requested that all of its propargite registrations be immediately amended by the addition of the terms and conditions described below. The Agency approved this request, effective April 5, 1996:

(1) Uniroyal will not sell or distribute any propargite products labeled for the deleted uses unless and until such uses are restored in accordance with the provisions set forth below. However, for a period of 21 days following the April 5, 1996 letter, Uniroyal may sell and distribute propargite products labeled for the deleted uses if Uniroyal stickers such products in accordance with paragraph (2) below, at the purchaser's premises before such products are resold or used by the purchaser.

(2) Uniroyal will sticker all propargite products in its warehouses and in possession of distributors and dealers. These stickers will notify buyers to use new labels that will be provided by Uniroyal and will accompany the purchased propargite products. Uniroyal will distribute new labels with the ten uses deleted. Uniroyal will use its best efforts to have existing stocks in the possession of growers stickered and will take back product and credit growers who return to Uniroyal product labeled for the deleted uses.

(3) Uniroyal will not seek restoration of the deleted uses until it submits a completed prolonged cell proliferation study or other new scientific data demonstrating a carcinogenic mechanism.

(4) Uniroyal will not seek State Local Needs registrations under FIFRA section 24(c) or emergency exemptions under FIFRA section 18 for any of the deleted uses, until EPA issues a final determination on any application by Uniroyal to restore the deleted uses submitted in accordance with paragraph (i) below.

(5) Uniroyal will not challenge revocation of tolerances and food additive regulations for any of the deleted uses.

(6) Uniroyal will not provide encouragement or assistance to persons or organizations seeking to challenge the voluntary use deletions requested herein or the associated tolerance or food additive regulation revocation actions.

(7) Uniroyal will not provide encouragement or assistance to persons or organizations seeking to restore the deleted uses, or seeking FIFRA section 24(c) registrations or FIFRA section 18 emergency exemptions for the deleted uses, until Uniroyal submits an application to restore the deleted uses in accordance with paragraph (i) below.

(8) In taking these actions to voluntarily delete certain uses and amend the terms and conditions of its propargite registrations, Uniroyal does not intend to create any rights for third parties.

(9) Uniroyal requests that the 90-day comment period under FIFRA section 6(f) be waived. Uniroyal consents to a 30-day comment period under FIFRA section 6(f). In an April 5, 1996 letter to Uniroyal's representative, EPA accepted the above amendments to the terms and conditions of propargite registrations and agreed to the following:

(i) After two years from April 5, 1996, if Uniroyal submits an application to restore any of the deleted uses, EPA will review the application and any supporting data within 120 days of submission of all materials to EPA. Upon completion of its review and during the 120-day review period, EPA will either grant the application or announce a preliminary decision to deny the application. If EPA announces a preliminary decision to deny the application, Uniroyal may request that EPA submit the scientific questions that are the subject of the denial to the Scientific Advisory Panel (SAP). EPA will schedule a prompt SAP review. EPA will consider the report of the SAP in making a final determination whether to grant Uniroyal's application. EPA will issue a final determination on the application within 90 days after receiving the SAP report.

(ii) EPA intends to commence proceedings to revoke tolerances for the deleted uses. If EPA commences proceedings to revoke tolerances for the deleted uses, it will propose effective dates for the revocations that provide the time needed for appropriate and orderly movement of crops already legally treated with propargite through the channels of commerce. Force Majeure: It is understood that if circumstances beyond EPA's control (such as an Act of God, war, or the like) interfere with EPA's ability to meet one or more of the deadlines set forth in paragraphs (i) or (ii) above, EPA will use its best efforts to complete such undertaking as expeditiously as possible.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this notice. In addition, EPA desires comment on related actions concerning tolerances for the proposed deleted uses. It is EPA's intention to propose revocation of the tolerances associated with these uses. It has generally been the practice of EPA in similar instances to establish an effective date for each revocation that takes into consideration the time needed for legally treated food to pass through the channels of commerce. It is useful for the Agency to have accurate information regarding the length of time required for each affected commodity to move through commerce. Thus, EPA requests public comments on this matter. This issue will also be available for comment as part of any propargite revocation actions proposed by EPA. Comments must be submitted by July 2, 1996. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under ''ADDRESSES'' at the beginning of this notice.

Information submitted as a comment concerning this notice may be claimed confidential by marking any or all that information as Confidential Business Information (CBI). EPA will not disclose information so marked, except in accordance with procedures set forth in 40 CFR part 2. A second copy of such comments, with the CBI deleted, also must be submitted for inclusion in the public record. EPA may publicly disclose without prior notice information not marked confidential.

A record has been established for this notice under docket number [OPP–64029] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice, as

well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this notice.

VI. Existing Stocks

For the purposes of this notice, existing stocks are defined as those stocks of the propargite products with the EPA registration numbers 400–82, 400–83, 400–89, 400–104, 400–154, 400–426, and 400–427 that are labeled with any of the ten uses subject to deletion by this notice and were packaged, labeled, and/or released for shipment prior to April 26, 1996.

EPA has an established policy for determinations concerning the sale, distribution, and use of existing stocks of pesticides where the registration has been amended, cancelled, or suspended under FIFRA sections 3, 4, or 6 dated June 26, 1991, (56 FR 29362). That policy states that in cases where EPA has identified a significant risk concern and the registration has been amended, EPA will make existing stocks determinations on a case-by-case basis. In most cases EPA will not permit the continued sale, distribution, or use of a product labeled with deleted uses unless it can be demonstrated that the benefits exceed the risks. EPA reserves the right to amend this existing stocks provision, should conditions warrant such amendment.

EPA has determined that the limited continued sale and use of existing stocks of propargite products labeled for the deleted uses permitted under paragraphs (1) and (2) of the terms and conditions contained in section IV of this notice, will not cause unreasonable adverse effects. Under these provisions, Uniroyal will not sell or distribute any propargite products containing the deleted uses. In addition, Uniroyal will relabel stocks at the distributor and retailer levels to reflect the deletion of the ten uses. Uniroyal will also accept return of products from users. Accordingly, EPA believes very little product labeled for use on the proposed deleted crops will be used during the 1996 growing season.

VII. Proposed Use Deletion/ Cancellation Order

The following Use Deletion/ Cancellation Order and Approval of Uniroyal's request for deletion of uses will take effect on August 1, 1996 unless before that date EPA publishes a notice in the Federal Register modifying this proposed order.

EPA approves Uniroyal's request for deletion of the apple, apricot, cranberry, fig, green bean, lima bean, peach, pear, plum, and strawberry uses from the propargite products with EPA registration numbers 400–82, 400–83, 400–89, 400–104, 400–154, 400–426, and 400–427, effective August 1, 1996 notice. All propargite products containing instructions for use on apples, apricots, cranberries, figs, green beans, lima beans, peaches, pears, plums, or strawberries are cancelled, effective August 1, 1996 notice.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: April 26, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–10910 Filed 5–2–96; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

[BM–23–APR–96–02]

Policy Statement on Association Structure

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: Section 7.8 of the Farm Credit Act of 1971, as amended, provides the Farm Credit Administration (FCA) with the authority to approve mergers of unlike associations. With limited exceptions, the FCA has not allowed unlike association mergers unless the territories of the merging entities have been the same. The FCA Board will now consider merger requests from unlike associations whose territories are not the same when such mergers promote efficiencies and improve services to borrowers, provided the resulting institutions are financially viable and any adverse impact on other Farm Credit System institutions is minimal. The FCA Board Policy Statement on Association Structure describes the criteria it will consider when acting on such merger requests. However, nothing in the Policy Statement limits the FCA Board's discretion with respect to charter requests.

EFFECTIVE DATE: April 23, 1996.

FOR FURTHER INFORMATION CONTACT: Elna J. Luopa, Chief, Corporate Affairs Division, Office of Special Supervision and Corporate Affairs, (703) 883-4475; or Victor A. Cohen, Associate General Counsel, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement on association structure is set forth below in its entirety:

Farm Credit Administration Board Policy Statement on Association Structure, BM–23–APR–96–02, FCA–PS–70

Effective Date: April 23, 1996.

Effect on Previous Action: Supersedes FCA–PS–27 [BM–21–NOV–88–02] and FCA–PS–30 [BM–06–JAN–89–07].

Source of Authority: Sections 5.17, 7.8, and 7.11 of the Farm Credit Act of 1971, as amended.

In the interest of providing the highest quality and most efficient service to agricultural borrowers, the Farm Credit Administration (FCA) encourages Farm Credit System (System) institutions to select structural options that are most conducive to that goal. The FCA Board will favor charter requests that promote such efficiency, provided they result in viable financial institutions and any adverse effect on other System institutions is minimal.

The FCA believes that agricultural credit associations (ACAs), formed pursuant to section 7.8(a) of the Farm Credit Act of l971, as amended, can promote such efficiency because of their ability to offer a broad array of services to borrowers. However, when the chartered territories of the merging associations are not identical, the FCA must determine whether to disapprove the merger application or to charter an ACA with (1) Full lending authority throughout its territory, resulting in competition with one or more adjoining associations; or (2) different lending authorities in different parts of its territory (bifurcated charter) with exclusive lending authorities in the common territory. Except for several ACAs formed as a result of section 411 of the Agricultural Credit Act of l987, the FCA generally has denied charter requests for the merger of unlike associations when the boundaries of the merging entities were not the same. These actions were taken to protect exclusive charters, to discourage intra-System competition, and to prevent the administrative difficulties caused by bifurcated charters. The FCA Board prefers charters that authorize a full range of services throughout an ACA's

territory. However, the FCA recognizes that permitting only exclusive, full-service ACA charters would limit the potential for achieving additional structural efficiencies at the association level when voluntary realignment cannot be achieved.

Consequently, the FCA Board has determined that, in acting on ACA charter requests, it will attempt to strike an appropriate balance between the efficiencies gained from the merger and any potential adverse impact the requested charter may have on borrowers, other associations, and the System. While the Board prefers that the affected associations resolve their territorial issues to permit the chartering of non-overlapping, full-service ACAs, the Board will not rule out granting a permanent, full-service charter that overlaps another association's territory if the adverse effect caused by any resulting competition is minimal, especially when the affected association board(s) consents. Any institution whose charter would be affected by such a merger request would have the opportunity to comment on the request. Should a nonexclusive charter be issued, the FCA Board would consider an application from an affected association(s) to convert to an ACA or for some other reasonable alternative. In addition, the Board may approve a request for a bifurcated charter when administrative difficulties are outweighed by the benefits to be derived. However, since the Board believes a bifurcated charter should be an interim step to a full-service ACA, it encourages the newly formed ACA and the affected association(s) to continue to work toward territorial realignment and full-service, non-overlapping ACAs..

Nothing in this policy statement shall limit the Board's discretion with respect to charter requests. Each request will be considered on its individual merits. In exercising its discretion, the Board will consider the following factors and any other factors the Board determines relevant at the time of the request.

1. Projected operating efficiencies to be realized as a result of the merger.

2. Projected improvements in the quality and range of services to be offered borrowers.

3. Potential for adverse financial consequences on other associations because of any competition that will result, and whether the affected association board(s) consents to the competition.

4. The effects of other alternatives that may be requested by either the merging constituents or any affected association(s).

This policy statement supersedes the November 221, 1988 FCA Board Policy Statement on Granting Nonexclusive Charters to Associations and the January 6, l989 FCA Board Policy Statement on Section 411 Mergers Resulting in Nonexclusive Charters.

Adopted this 23rd day of April, 1996 by order of the Board.

Dated: April 29, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–10988 Filed 5–2–96; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission; Comments Requested

April 29, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 2, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0641.

Title: Notification to File Progress Report.

Form No.: FCC Form 218–I.

Type of Review: Revision of existing collection.

Respondents: Businesses or other for-profit, Individuals or households.

Number of Respondents: 587.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 587 hours.

Needs and Uses: The data collected is used by Commission staff to determine whether the licensee is entitled to their authorization to operate. From this data, the Commission is able to confirm that service has been made available to at least 30 percent of the population or land area within three years of license grant and 50 percent of the population or land area within five years of license grant. The data collected ensures licensees are making proper use of the frequency spectrum.

The Commission's rules were recently revised to eliminate the requirement for a progress report at the conclusion of the one year benchmark, thereby decreasing the burden on the applicant and the Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–11018 Filed 5–2–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Policy Statement on the Fitness and Integrity of Lessors of Real Property to the FDIC

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy; correction.

SUMMARY: In the statement of policy beginning on page 5554 in the issue of Tuesday, February 13, 1996, make the following correction:

Change the reference ''paragraph III.B. (1) through (4) to ''paragraph III.B. (1) through (5)'' each time it appears in the following places:

—On page 5555, in the third column, in paragraph V.A. (1)(b);

—On page 5556, in the second column, in paragraph V.B. (1)(a), and in the third column in paragraph V.B.(4).

Dated: April 26, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–10869 Filed 5–2–96; 8:45 am]

BILLING CODE 6417–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1111–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1111–DR), dated April 23, 1996, and related determinations.

EFFECTIVE DATE: April 24, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1996:

Franklin, Madison, Marion and Washington Counties for Individual Assistance; and,

Crawford and Sebastian Counties for all other categories of assistance under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–11039 Filed 5–2–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended:

Ulysses Cruises, Inc., Compania de Vapores Islandbreeze S.A. and Festivale Maritime Limited, 901 South America Way, Miami, Florida 33132
Vessel: *Islandbreeze*

Ulysses Cruises, Inc. and Compania de Vapores Oceanbreeze S.A., 901 South America Way, Miami, Florida 33132
Vessel: *Oceanbreeze*

Cunard Line Limited and Norwegian Cruises Ltd., 555 Fifth Avenue, New York, New York 10017–2453
Vessels: *Sea Goddess I and Sea Goddess II*

Dated: April 29, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–10981 Filed 5–2–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 16, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Milton Pearce Blake, and Jack L. & Adrienne Grimmett, of Pauls Valley, Oklahoma; William E. & Gay W. Humphrey, of Oklahoma City, Oklahoma; and Richard Keith Mansfield, of Marlow, Oklahoma; all to acquire an additional 5.01 percent each for a total of 25 percent each, of the voting shares of Leader First Bancorp, Inc., Marlow, Oklahoma, and thereby indirectly acquire The First National Bank in Marlow, Marlow, Oklahoma.

Board of Governors of the Federal Reserve System, April 29, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-11000 Filed 5-2-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Magnolia Midlands Bankshares, Inc., Eastman, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Eastman, Eastman, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's Bancshares, Inc., St. Louis, Missouri; to merge with Canadian Bancshares, Inc., Canadian, Texas, and thereby indirectly acquire First State Bank of Canadian, Canadian, Texas.

2. Heartland Bancshares, Inc., Herrin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Heartland National Bank, Herrin, Illinois. Heartland National Bank is the proposed successor to the conversion of First Federal Savings and Loan Association of Herrin, Herrin, Illinois, from a federal mutual savings and loan to a federal stock savings and loan association, and then to a national bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Inter-Mountain Bancorp., Inc., Bozeman, Montana; to acquire 100 percent of the voting shares of First Security Bank of Belgrade, Belgrade, Montana, a *de novo* bank.

Board of Governors of the Federal Reserve System, April 29, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-11002 Filed 5-2-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Keeco, Inc., Chicago, Illinois; to acquire Premier Insurance Services, Inc., Warren, Illinois, and thereby engage in insurance agency activities in towns of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

2. Northland Insurance Agency, Inc., Chicago, Illinois; to acquire Premier Insurance Services, Inc., Warren, Illinois, and thereby engage in insurance agency activities in towns of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 29, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-11001 Filed 5-2-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 040896 AND 041996

Name of acquiring person, name of acquired person, name of acquiring entity	PMN No.	Date terminated
Royal Dutch Petroleum Company (a Dutch company), Benton Oil and Gas Company, Benton Oil and Gas Company of Louisiana	96–1435	04/09/96
A. M. Castle & Co., Thomas W. Kreher, Kreher Steel Co., Inc	96–1330	04/11/96
Radisys Corporation, Intel Corporation, Intel Corporation	96–1378	04/11/96
SunGard Data Systems Inc., Digital Equipment Corporation, Digital Equipment Corporation	96–1415	04/11/96
Baptist Health Care Corporation, Lakeview Center, Inc., Lakeview Center, Inc	96–1422	04/11/96
All American Communications, Inc., All American Communications, Inc., Mark Goodson Productions, L.L.C	96–1471	04/11/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 040896 AND 041996—Continued

Name of acquiring person, name of acquired person, name of acquiring entity	PMN No.	Date terminated
Joseph M. Field, Samuel J. Heyman, GAF Broadcasting Company, Inc. and GAF Properties, Inc	96–1476	04/11/96
Susanne Klatten, The P.D. George Company, The P.D. George Company	96–1498	04/11/96
CRH plc, Bolinder Companies, Inc., Bolinder Companies, Inc	96–1503	04/11/96
Abbott Laboratories, MediSense, Inc., MediSense, Inc	96–1544	04/11/96
Catholic Healthcare West, Catholic Healthcare Corporation, Mercy Hospital and HealthServices	96–1481	04/12/96
Media General, Inc., Scudder Family Voting Trust for Affiliated News. Inves., Eastern Colorado Publishing Company	96–1482	04/12/96
James D. Carrecker, Wyndham Hotel Corporation (Joint Venture), Wyndham Hotel Corporation (Joint Venture)	96–1492	04/12/96
Catholic Healthcare West, Sisters of the Third Order of Saint Dominic, St. Joseph's Medical Center of Stockton	96–1493	04/12/96
CF Securities L.P., Wyndham Hotel Corporation (Joint Venture), Wyndham Hotel Corporation (Joint Venture)	96–1505	04/12/96
Crown Pacific Partners, L.P., Willamette Industries, Inc., Willamette Industries, Inc	96–1520	04/12/96
The B.F. Goodrich Company, G. Russell Lincoln, Algan, Inc	96–1522	04/12/96
Saint Barnabas Corporation (a non-profit corporation) Community/Kimball Health Care System, Inc. (non profit), Community/Kimball Health Care System, Inc. (non profit)	96–1523	04/12/96
Interim Services Inc., Brandon Systems Corporation, Brandon Systems Corporation	96–1525	04/12/96
ASG AB, Mr. Desmond Kearney, International Cargo Group, Inc	96–1527	04/12/96
CalEnergy Company, Inc., Edison International, Conejo Energy Company	96–1529	04/12/96
The Second Dave Samson Trust, VIAG AG (a German company), Klockner Namasco Corporation	96–1531	04/12/96
Bedrock Holdings Partners, Wyndham Hotel Corporation, Wyndham Hotel Corporation	96–1532	04/12/96
The Timken Company, John D. Morris, Jr., Ohio Alloy Steels, Inc	96–1535	04/12/96
Supervalu Inc., Donald Butson, Butson's Enterprises, Inc	96–1537	04/12/96
Supervalu Inc., Charles P. Butson, Butson's Enterprises, Inc	96–1539	04/12/96
The Williams Companies, Inc., Global Access Telecommunications Services, Inc., Global Access Telecommunications Services, Inc	96–1541	04/12/96
Grupo Industrial Bimbo S.A., Business Asset Trust I, Pacific Pride Baking Company	96–1542	04/12/96
InterMedia Capital Partners IV, L.P., InterMedia Capital Management V, L.P., Robin Media Holdings, Inc	96–1543	04/12/96
First Union Corporation, First Chicago NBD Corporation, Oosterpark Corporation, Vondelpark Corporation & Rjk C	96–1550	04/12/96
Intermedia Communications of Florida, Inc., S.I. Newhouse, Jr., EMI Communications Corp., Eastern Message, Inc., Easter	96–1552	04/12/96
Intermedia Communications of Florida, Inc., Donald E. Newhouse, EMI Communications Corp., Eastern Message, Inc., Easter	96–1553	04/12/96
InterCel, Inc., GTE Corporation, GTE Mobilnet Incorporated	96–1564	04/12/96
Nordahl L. Brue, Quality Dining, Inc., Quality Dining, Inc	96–1569	04/12/96
Michael J. Dressell, Quality Dining, Inc., Quality Dining, Inc	96–1570	04/12/96
Quality Dining, Inc., Bruegger's Corporation, Bruegger's Corporation	96–1571	04/12/96
Bristol-Myers Squibb Company, Somatix Therapy Corporation, Somatix Therapy Corporation	96–1573	04/12/96
Eaton Corporation, CAPCO Automotive Products Corporation, CAPCO Automotive Products Corporation	96–1438	04/15/96
V. Prem Watsa, Skandia Insurance Company Ltd (publ), Skandia America Reinsurance Corporation	96–1447	04/16/96
Financial Services Acquisition Corporation, Welsh, Carson, Anderson & Stowe VI, L.P., Euro Brokers Investment Corporation	96–1451	04/16/96
Morgan Stanley Capital Partners III, L.P., The Plymouth Rock Company Incorporated, Direct Response Corporation	96–1454	04/16/96
Herff Jones, Inc. Employee Stock Ownership Plan, M. Francois Pinault, Continental Graphics Corporation	96–1480	04/16/96
FS Equity Partners III, L.P., KMS Holding Corporation, KMS Holding Corporation	96–1515	04/16/96
Lockheed Martin Corporation, Loral Corporation, Loral Corporation	96–0920	04/18/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–11038 Filed 5–2–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Health Resources and Services Administration

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 61 FR 13503, dated March 27, 1996) is amended to reflect the following changes in the Bureau of Health Resources Development.

Under Section HB–20, Organization and Functions, amend the functional statements for the *Bureau of Health Resources Development (HBB)* as follows:

1. Delete the *Information Resources Staff, Office of the Director, BHRD (HBB1),* functional statement in its entirety.

2. Establish the *Office of Information Technology Management (HBB16),* and enter the functional statement as follows:

Office of Information Technology Management (HBB16)

The Office of Information Technology Management (OITM): (1) Develops, reviews and implements policies and procedures to promote improved ADP and information resources management capabilities, practices and clearances throughout BHRD; (2) develops and coordinates BHRD-wide plans and budgets for the management of information technology and services,

including centralized data processing, office automation, and telecommunications; (3) develops and recommends policies and procedures relating to information resources management and support services; (4) plans, manages, administers and coordinates BHRD microcomputer systems, including all required linkages to networks inside and outside BHRD, including mainframe systems; (5) manages and coordinates state-of-the-art information science technology and provides technical advice, consultation, and assistance in information resources management and the use of ADP resources; (6) develops and coordinates the implementation of information resources management with other HRSA Bureaus; (8) analyzes the Bureau's need for information systems and performs planning, feasibility, utility, practicality, cost/benefit, and impact studies preceding any new or major inter- or intra-Agency systems development or acquisition; (9) manages ADP clearance, purchase, installation, and maintenance of all BHRD hardware and software packages; (10) provides a full range of automated data processing activities to assist in the production of meaningful and timely information for Bureau management and its decision-making processes; (11) provides technical assistance and consultation on computer systems design, development, and operation to components within the Bureau and regional offices; (12) evaluates state-of-the-art hardware and software systems to test their applicability and cost effectiveness for use by BHRD program staff; (13) designs, develops, and carries out special studies and/or evaluations of Bureau programs requiring advanced computer applications, programming skills, and microcomputer-mainframe interaction; (14) performs liaison with HRSA IRM staff with respect to information systems policy and security issues, and other ADP concerns with HRSA, PHS or Department implications; (15) manages property and equipment management activities; and (16) oversees and directs telecommunications activities and services.

Delegations of Authority

All delegations and re-delegations of authorities to officers and employees of the Bureau of Health Resources Development which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further re-delegation, provided they are consistent with this reorganization.

This reorganization is will be effective upon date of signature.

Dated: April 22, 1996.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 96–10839 Filed 5–2–96; 8:45 am]

BILLING CODE 4160–15–M

Centers for Disease Control and Prevention

Hanford Thyroid Morbidity Study Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Times and Dates: 9 a.m.–5 p.m., May 20, 1996. 7 p.m.–9 p.m., May 20, 1996.

Place: Wyndham Garden Hotel, 18118 Pacific Highway South, Seattle, Washington 98188.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study.

The Committee will review development of the study protocol and recommend changes of scientific merit to CDC, advise on the conduct of the pilot study using the approved protocol, and assist in determining the feasibility of a full-scale epidemiologic study. If the full-scale epidemiologic study is carried out, the Committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters To Be Discussed: The Committee will discuss the progress and updates of the status of various components of the Hanford Thyroid Disease Study being conducted by the Fred Hutchinson Cancer Research Center. Agenda items include: National Center for Environmental Health (NCEH) activities on the progress of current studies, an update on the Native American component, and public involvement activities. On May 20, at 7 p.m., the meeting will continue in order to allow more time for public input and comment.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040.

Dated: April 29, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 96–11028 Filed 5–2–96; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

NCI Cancer Information Service Community Services Database Survey and Verification; Proposed Collection; Comment Request

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* NCI Cancer Information Service Community Services Database Survey and Verification. *Type of Information Collection Request:* New. *Form Number:* not applicable. *Need and Use of Information Collection:* The CIS provides the general public, cancer patients, families, health professionals, and others with the latest information on cancer. Essential to fulfilling its role as a referral source for cancer patients and their families is the identification, acquisition, and dissemination of information about hospitals, breast and cervical cancer screening clinics, and cancer pain management programs. This effort involves sending a survey tool or a verification instrument annually to 17,135 respondents. *Frequency of Response:* Annual. *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal government, state, local or tribal government. *Type of Respondents:* Administrators of hospitals, clinics, and cancer screening centers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 17,135; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .167; and *Estimated Total Annual Burden Hours Requested:* 2,862. The annualized cost to respondents is estimated at: $34,339. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Administrators	17,135	1	.167	2,862
Total				2,862

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Chris Thomsen, Acting Chief, Cancer Information Service, National Cancer Institute, NIH, Building 31, Room 10A16, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–5583 ext. 239 or E-mail your request, including your address to: thomsenc@occ.nci.nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before July 2, 1996.

Dated: April 29, 1996.

Philip D. Amoruso,

Associate Director of Extramural Management, NCI.

[FR Doc. 96–11070 Filed 5–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following National Institute on Aging Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: National Institute on Aging Special Emphasis Panel (Telephone Conference Call)

Date of Meeting: May 7, 1996

Time of Meeting: 2:00 p.m.

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20802

Agenda: To provide concept review to modify Women's Health and Aging Study Contract.

Contact Person: Dr. Michael Oxman, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11072 Filed 5–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, May 1, 1996, which was to have taken place as a telephone conference call originating in Room 400C, Executive Plaza South, 6120 Executive Blvd., Rockville, Maryland 20852, which was published in the Federal Register on April 22, 1996, 61 FR 17713.

This meeting is being cancelled due to the withdrawal of the application that was under consideration.

Dated: April 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11073 Filed 5–2–96; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 61 FR 3722, February 1, 1996) is amended to reflect the reorganization of the Office of the Director, National Institute of Child Health and Human Development (NICHD). The reorganization consists of the following: (1) Abolish the Office of Grants and Contracts (HNT15) and transfer its functions to the Office of Administrative Management (OAM) (HNT12) and (2) revise the OAM functional statement. This reorganization improves the ability of the NICHD to fulfill its mission by restructuring the OD/NICHD and thereby improving the integration of related administrative and management areas and streamlining operations.

Section HN–B, Organization and Functions is amended as follows:

(1) Under the heading *Office of Grants and Contracts (HNT15),* delete the title and functional statement in their entirety.

(2) Under the heading *Office of Administrative Management (HNT12)* revise the functional statement as follows:

Office of Administrative Management (HNT12) (1) Advises the NICHD Director on administrative matters; (2) advises the Director and top staff on implications and impact of plans and programs from other Departmental levels and Federal agencies which affect budget, personnel, equal employment, grant, contract, information technology, or administrative services; (3) plans and directs financial, personnel, equal employment, grant, contract, information technology, and

administrative management functions of the Institute; and (4) develops and implements Institute-wide policies and procedures on administrative matters.

Dated: April 23, 1996.

Harold Varmus,

Director, NIH.

[FR Doc. 96–11071 Filed 5–2–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSNG AND URBAN DEVELOPMENT

[Docket No. FR–3917–N–72]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: June 17, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contractor's Requisition Project Mortgages—HUD–92448.

OMB Control Number: 2502–0028.

Description of the need for information and proposed use: Section 207(b) of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C. 1701 et seq.), applicable portions of which are attached for reference, authorizes the Secretary of the Department of Housing and Urban Development (HUD) to insure mortgages (including advances on such mortgages during construction) for construction of rental housing projects. Section 212 of the National Housing Act, applicable portions of which are attached for reference, prevents the Secretary of HUD from insuring a project unless the principal contractor files a prevailing wage certificate. Paragraph (4) of 24 CFR 207.19(d) sets forth requirements for insurance of advances and certification of compliance with labor standards and prevailing wage requirements. Form HUD–92448 is used by the contractor to obtain program benefits, consisting of distribution of insured mortgage proceeds when construction costs are involved. The information regarding completed work items is used by the Field Office (FO) to ensure that payments from mortgage proceeds are made for work actually completed in a satisfactory manner. The work must be inspected and approved by a FO inspector. The certification regarding prevailing wages is used by the FO to ensure compliance with prevailing wage rates.

Agency form numbers: HUD–92448.

Members of affected public: General Contractors.

An estimation of the total numbers of hours needed to prepare the information collection is 6000 hours, the number of respondents is 1000, frequency of response is 10, and the hours of response is 6 hours.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 26, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–11003 Filed 5–2–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–71]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 2, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Scott Werdal, Telephone number (202) 708–0614, extension 2562 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information

technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Owner Certification on Low-Income Housing Tax Credits.

OMB Control Number: 2502–0377.

Agency form numbers: HUD–2880.

Description of the need for the information and proposed use: Since the 1986 Tax Reform Act, Low Income Housing Tax Credits (LIHTCs) have provided a significant amount of equity financing supporting the development of affordable housing units. Since the implementation of the 1989 HUD Reform Act, sponsors of HUD Multifamily projects seeking new subsidies from HUD have been required to make a specific certification with respect to LIHTCs.

Since 1992 HUD has, through Form HUD–2880, ''Applicant/Recipient Disclosure/Update Report'' required that those persons or entities which receive, or are applying to receive, HUD and other government assistance, certify their intentions regarding the nature and extent of the total assistance which will be required or obtained, including LIHTCs.

The basic concept of ''subsidy layering'' is that total project Sources of financing may not exceed total project uses, and to the extent that they do, must be reduced so as to prevent excess subsidy layering. Therefore, and as a logical first step, project sponsors using LIHTCs and any other form of HUD assistance must identify all anticipated project uses when completing Form HUD–2880. HUD recognizes that this estimation is not particularly easy to make at a multi-million dollar, Multifamily project's formative stages. Nevertheless, pursuant to HUD Reform Act requirements, certain project uses relating to the Builder, Developer and Syndicator fees *are limited* in accordance with HUD Housing's Subsidy Layering Guidelines and implementing Notices and instructions, and every effort must be made to segregate out-of-pocket project costs which might otherwise be lumped into developer's fees.

Sponsors of LIHTC projects, in particular, must be careful to recognize that all costs associated with the project be properly estimated and characterized. For example, incentives earned through successful performance of what are essentially property management duties should not be lumped into the Sources and Uses Statement which the Form HUD–2880 certification requires as generic ''Developer's Fees''. Such speculative future Uses of presently sought-after LIHTC equity financing, and ultimately syndication installment proceeds, should be identified as ''property management fees'' or ''General Partner Reserve incentives''.

HUD has learned that the LIHTC certification and disclosure requirements need not be an impediment to successful development of LIHTC projects using FHA financing; nor do the subsidy layering guidelines relating to Builders and Developers fees mean that subsidy reductions will necessarily be imposed. Subsidy *gathering* problems are far more common to Developers of LIHTC and other Affordable Multifamily projects than subsidy *layering* problems. Only through informed, thorough preparation of Form HUD–2880 can it be determined whether a layering problem exists.

Members of affected public: Multifamily Project Sponsors; an estimation of the total numbers of hours needed to prepare the information collection is 1250, the number of respondents, 500, frequency of response, once, and hours of response, 2.5.

Status of the proposed information collection: Extension with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 26, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–11004 Filed 5–2–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–70]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: July 2, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing Department of Housing and Urban Development, 451–7th Street SW., Room 9116, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Donald Kline, Single Family Insurance Operations Division (SFIOD), telephone number (202) 708–0614 ext. 3511 for form HUD–27050–A or Savannah Williams, SFIOD, telephone number (202) 708–0614 ext. 3407 for form HUD–27050–B (these are not toll-free numbers) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgage Insurance Termination—HUD–27050–A, Application for Premium Refund or Distributive Share Payment, HUD–27050–B.

OMB Control Number: 2502–0414.

Description of the Need for the Information and Proposed Use: Mortgage Insurance Termination, form HUD–27050–A, is used by servicing mortgagees to comply with HUD requirements for reporting termination of FHA mortgage insurance. This form is used whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. Under the new streamline III program when the form is submitted on magnetic tape, the form can be used to directly pay eligible homeowners. This condition occurs when the form passes the criteria of certain system edits.

As the result the system generates a disbursement to the eligible homeowner for the refund consisting of the unused portion of the paid premium. The collection information required is used

to update HUD's Single Family Insurance System. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information the premium collection/monitoring function would be severely impeded and program data would be unreliable. Under streamline III when the form is processed and but does not pass the series of edits the system generates in these cases the form HUD–27050–B to the homeowner to be completed and returned to HUD for further processing for the refund. In general a Premium Refund is the difference between the amount of prepaid premium and the amount of the premium that has been earned by HUD up to the time the mortgage is terminated.

Estimate of Burden: Public reporting burden for this collection of information for the HUD–27050–A is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The number of respondents is 9,500 and the frequency of response is as required and the volume per respondents is 1 to 40,000 depending on the size of their FHA portfolio.

Public reporting burden for this collection of information for the HUD–27–50–B is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information. The number of respondents is 382, 000 and the frequency of response is one time and the volume per respondents is 1.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 26, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–11005 Filed 5–2–96; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–83]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and under utilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/ to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 442–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Derrick Mitchell, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6083; Navy: Mr. John Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Air Force: Ms. Barbara Jenkins, Air Force Real Estate Agency, Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Mr. Bob Swieconek, Army Corps of Engineers, Civilian Facilities, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1753; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of

Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; Energy: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, Room 6H–058, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: April 29, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program—Federal Register Report for 05/03/96

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 1168
Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99703–
Landholding Agency: Army
Property Number: 219610636
Status: Underutilized
Comment: 6455 sq. ft., concrete, presence of asbestos, most recent use—warehouse.

Bldg. 4057
Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99703–
Landholding Agency: Army
Property Number: 219610637
Status: Underutilized
Comment: 2604 sq. ft., presence of asbestos/POL, most recent use—sewage/waste water treatment.

Arizona

Bldg. 73902
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219610638
Status: Unutilized
Comment: 5355 sq. ft., presence of asbestos, most recent use—maintenance, off-site use only.

9 Bldgs.
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Location: 82002, 82027, 82028, 83021, 83022, 85008, 85009, 85027, 85028
Landholding Agency: Army
Property Number: 219610639
Status: Unutilized
Comment: various sq. ft., presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 85005
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219610640
Status: Unutilized
Comment: 3515 sq. ft., presence of asbestos, most recent use—dining, off-site use only.

21 Bldgs.
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Location: 66057, 66152–66155, 66157–66159, 67201, 80020, 82105, 82106, 83013, 83017, 83020, 84002, 84017, 85015, 85017, 85102, 85105
Landholding Agency: Army
Property Number: 219610641
Status: Unutilized
Comment: various sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 66055
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219610642
Status: Unutilized
Comment: 1946 sq. ft., presence of asbestos, most recent use—recreation, off-site use only.

7 Bldgs.
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Location: 30028, 66150, 67360, 71919, 73914, 74909, 82024
Landholding Agency: Army
Property Number: 219610643
Status: Unutilized
Comment: various sq. ft., presence of asbestos, most recent use—storage, off-site use only.

7 Bldgs.
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Location: 71210, 71211, 80002, 80014, 82005, 82006, 85103
Landholding Agency: Army
Property Number: 219610644
Status: Unutilized
Comment: various sq. ft., presence of asbestos, most recent use—classrooms, off-site use only.

District of Columbia

Dalecarlia Reservoir
Bldgs. 5900, 5902, 5904, 5906, 5908, 5910
Washington Aqueduct
Washington DC 20016–
Landholding Agency: COE
Property Number: 319610004
Status: Excess
Comment: brick/frame residences in poor condition w/2 floors and basement, presence of asbestos, on National Historic Register, off-site use only.

Georgia

Bldg. T–959
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219610646
Status: Unutilized
Comment: 3108 sq. ft., needs rehab, most recent use—motor pool, off-site use only.

Bldg. T–1119
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219610647
Status: Unutilized
Comment: 94 sq. ft., poor condition, most recent use—storage, off-site use only.

Bldg. P–4583
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219610648
Status: Unutilized
Comment: 40 sq. ft., most recent use—fuel bldg., off-site use only.

Bldg. B1201
Fort Gordon
Ft Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610649
Status: Unutilized
Comment: 980 sq. ft., need repairs, most recent use—office, off-site use only.

Bldg. 2141
Fort Gordon
Ft Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610655
Status: Unutilized
Comment: 2283 sq. ft., need repairs, most recent use—office, off-site use only.

Bldg. 33602
Fort Gordon
Ft Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610658
Status: Unutilized
Comment: 9531 sq. ft., need repairs, most recent use—office, off-site use only.

Bldg. T–8224
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219610661
Status: Unutilized
Comment: 25 sq. ft., sentry station, needs repair, off-site use only.

Hawaii

Bldg. P–202, Kalani Center
Fort DeRussy
Honolulu HI 96815–
Landholding Agency: Army
Property Number: 219610662
Status: Unutilized
Comment: 69559 sq ft., most recent use—army reserve center, off-site use only.

Bldg. T–1191
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219610663
Status: Unutilized
Comment: 7186 gross sq. ft., termite damage, most recent use—range support, off-site use only.

Bldg. T–255A
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219610664
Status: Unutilized
Comment: 943 gross sq. ft., most recent use—boy scout hut, off-site use only.

Bldg. P–A3025
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219610665
Status: Unutilized
Comment: 1093 gross sq. ft., termite damage, most recent use—range support, off-site use only.

Bldg. P–31
Mauna Kapu Communications Station Site
Makakilo Co: Ewa Hi 96706–
Landholding Agency: Army
Property Number: 219610666
Status: Unutilized
Comment: 214 gross sq. ft., most recnet use—generator bldg., off-site use only.

Indiana

Bldg. 41, USARC Brann
Rushville Co: Rush IN 46173–
Landholding Agency: Army
Property Number: 219610667
Status: Unutilized
Comment: 10820 sq. ft., presence of asbestos, most recent use—office/storage/training.

Bldg. 42, USARC Brann
Rushville Co: Rush IN 46173–
Landholding Agency: Army
Property Number: 219610668
Status: Unutilized
Comment: 2464 sq. ft., presence of asbestos, most recent use—vehicle maintenance shop.

Bldg. 27, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 219610669
Status: Unutilized
Comment: 10379 sq. ft., presence of asbestos, most recent use—office/storage/training.

Bldg. 36, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 219610670
Status: Unutilized
Comment: 1802 sq. ft., presence of asbestos, most recent use—vehicle maintenance.

Iowa

Tract 141
Melos, Stanley, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319610005
Status: Excess
Comment: 1104 sq. ft., most recent use—storage, needs rehab, possible asbestos, off-site use only.

Kansas

Bldg. P–157
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219610677
Status: Unutilized
Comment: 2070 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. P–1042
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219610678
Status: Unutilized
Comment: 3 floors, needs repair, presence of lead paint, most recent use—maintenance shop, off-site use only.

Kentucky

Bldg. 2541
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610679
Status: Unutilized
Comment: 1850 sq. ft., needs repair, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2556
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610680
Status: Unutilized
Comment: 5400 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. 2634
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610681
Status: Unutilized
Comment: 5310 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. 2636
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610682
Status: Unutilized
Comment: 5310 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. 2711
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610683
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 2713
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610684
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 2742
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610685
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 2521
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610686
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 6550
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610687
Status: Unutilized
Comment: 25701 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldgs. 2306, 2307
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610688
Status: Unutilized
Comment: 2160 & 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2311
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610689
Status: Unutilized
Comment: 2500 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2313
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610690
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2315
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610691
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2317
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610692
Status: Unutilized
Comment: 2500 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2323
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610693
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2325
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610694
Status: Unutilized
Comment: 2625 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2327
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610695
Status: Unutilized
Comment: 2500 sq. ft., presence of asbestos, most recent use—admin. off-site use only.

Bldg. 2329
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610696
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldgs. 2336, 2346, 2348, 2513
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army

Property Number: 219610697
Status: Unutilized
Comment: 5310 sq. ft. each, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2527
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610698
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2537
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610699
Status: Unutilized
Comment: 5310 sq. ft., presence of asbestos, most recent use—admin. off-site use only.

Bldg. 2539
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610700
Status: Unutilized
Comment: 2500 sq. ft., presence of asbestos, most recent use—admin. off-site use only.

Bldg. 2642
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610701
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2730
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610702
Status: Unutilized
Comment: 3060 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2734
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610703
Status: Unutilized
Comment: 2950 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2744
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610704
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2909
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610705
Status: Unutilized
Comment: 1198 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 3105
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610706
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 3108
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610707
Status: Unutilized
Comment: 7538 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Nolin River Lake
Bee Spring Co: Edmonson KY 42207–
Landholding Agency: COE
Property Number: 319610003
Status: Unutilized
Comment: 1270 sq. ft. brick residence, steep and narrow access road w/short radius turns, off-site use only.

Maryland

Bldg. 823
Fort Detrick
Frederick Co: Frederick MD 21702–
Landholding Agency: Army
Property Number: 219610718
Status: Unutilized
Comment: 1790 sq. ft., needs rehab, most recent use—admin.

Bldg. 824
Fort Detrick
Frederick Co: Frederick MD 21702–
Landholding Agency: Army
Property Number: 219610719
Status: Unutilized
Comment: 1747 sq. ft., needs repair, most recent use—admin.

New York

Bldgs. 2611, 2613, 2615, 2617
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219610721
Status: Unutilized
Comment: 4 detached garages with 2-vehicle parking per garage, off-site use only.

Bldg. 148
West Point
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219610722
Status: Unutilized
Comment: 1900 sq. ft., 2-story brick residence, possible lead base paint, off-site use only.

Bldg. 1342
West Point
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219610723
Status: Unutilized
Comment: 400 sq. ft., detached garage, possible lead base paint, off-site use only.

North Carolina

Bldg. 3–2331, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219610724
Status: Unutilized
Comment: 1027 sq. ft., needs repair, possible asbestos, most recent use—storage, off-site use only.

Bldg. N–3931, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219610725
Status: Unutilized
Comment: 3258 sq. ft., needs repair, possible asbestos, most recent use—admin., off-site use only.

Bldg. N–4921, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219610727
Status: Unutilized
Comment: 5676 sq. ft., needs repair, possible asbestos, most recent use—maintenance, off-site use only.

Oklahoma

Bldg. T–241, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610731
Status: Unutilized
Comment: 2400 sq. ft., possible asbestos, most recent use—barracks, off-site use only.

Bldg. T–297, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610732
Status: Unutilized
Comment: 2427 sq. ft., possible asbestos, most recent use—classroom, off-site use only.

Bldg. T–4008, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610733
Status: Unutilized
Comment: 2750 sq. ft., possible asbestos, most recent use—office, off-site use only.

Bldg. T–4467, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610734
Status: Unutilized
Comment: 3069 sq. ft., possible asbestos, most recent use—mess hall, off-site use only.

Bldg. T–4458, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610735
Status: Unutilized
Comment: 2964 sq. ft., needs repair, possible asbestos, most recent use—mess hall, off-site use only.

Bldg. T–367, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610736
Status: Unutilized
Comment: 9370 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. T–1955, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610737
Status: Unutilized

Comment: 12810 sq. ft., possible asbestos, most recent use—storage, off-site use only.
Bldg. T–2179, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610738
Status: Unutilized
Comment: 18775 sq. ft., possible asbestos, most recent use—storage, off-site use only.
Bldg. T–5604, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610739
Status: Unutilized
Comment: 9190 sq. ft., possible asbestos, most recent use—storage, off-site use only.
Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.
Bldg. P–5237, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610741
Status: Unutilized
Comment: 87 sq. ft., possible asbestos, most recent use—storage, off-site use only.
Bldg. P–2787, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610742
Status: Unutilized
Comment: 200 sq. ft., possible asbestos, most recent use—transformer bldg., off-site use only.
Bldg. P–2785, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610743
Status: Unutilized
Comment: 196 sq. ft., possible asbestos, most recent use—transformer bldg., off-site use only.
Bldg. P–1198, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610744
Status: Unutilized
Comment: 256 sq. ft., possible asbestos, most recent use—water pumping station, off-site use only.

Texas

Bldg. 56514
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610745
Status: Unutilized
Comment: 500 sq. ft., most recent use—dining, off-site use only.
Bldg. 56642–56645
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610746
Status: Unutilized
Comment: 500 sq. ft., most recent use—dining, off-site use only.
Bldg. 56649
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610747
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.
Bldgs. 56722–56725
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610748
Status: Unutilized
Comment: 500 sq. ft. each, most recent use—dining, off-site use only.
Bldg. 56729
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610749
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.
Bldgs. 56732–56735
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610750
Status: Unutilized
Comment: 500 sq. ft. each, most recent use—dining, off-site use only.
Bldg. 56739
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610751
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.
Bldgs. 56742–56745
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610752
Status: Unutilized
Comment: 500 sq. ft. each, most recent use—dining, off-site use only.
Bldg. 56749
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610753
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.
Bldg. 439
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610754
Status: Unutilized
Comment: 3983 sq. ft., needs rehab, most recent use—admin., off-site use only.
Bldgs. 2028–2034, 2038
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610756
Status: Unutilized
Comment: 4508 sq. ft. each, needs rehab, most recent use—vehicle maint. shop, off-site use only.
Bldg. 2046
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610757
Status: Unutilized
Comment: 2700 sq. ft., needs rehabl, most recent use—storage, off-site use only.
Bldg. 4276A
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610758
Status: Unutilized
Comment: 40 sq. ft., needs rehab, most recent use—storage, off-site use only.
Bldg. 57020
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 2196107560
Status: Unutilized
Comment: 33792 sq. ft., needs rehab, most recent use—storage, off-site use only.
Bldg. 4221
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610762
Status: Unutilized
Comment: 44096 sq. ft., needs rehab, most recent use—laundry, off-site use only.
Bldg. 4276
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610765
Status: Unutilized
Comment: 3772 sq. ft., most recent use—heat plant, off-site use only.
Bldg. 2035
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610766
Status: Unutilized
Comment: 336 sq. ft., needs rehab, most recent use—dispatch bldg., off-site use only.
Bldg. 2036
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610767
Status: Unutilized
Comment: 1350 sq. ft., needs rehab, most recent use—repair shop, off-site use only.
Bldgs. 56738, 56647
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610768
Status: Unutilized
Comment: needs rehab, off-site use only.
Bldg. T–1052
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610769
Status: Unutilized
Comment: 4016 sq. ft., presence of asbestos & lead base paint, most recent use—chapel, off-site use only.
Bldg. T–6002, Camp Bullis
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610779
Status: Unutilized
Comment: 1099 sq. ft., needs repair, possible asbestos/lead base paint, off-site use only.

Bldgs. P–6080 thru P–6082
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610780
Status: Unutilized
Comment: 64 gross sq. ft. each, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. P–8224B
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610783
Status: Underutilized
Comment: 1126 gross sq. ft., needs rehab, presence of lead base paint, most recent use—family housing.

27 Family Quarters
Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 5601, 5603, 5605, 5607, 5609, 5611, 5613, 5617, 5619, 5620, 5622, 5625, 5627, 5652, 5654, 5655, 5658, 5662, 5663, 5665, 5667, 5669, 5671, 5672, 5675, 5677, 5656
Landholding Agency: Army
Property Number: 219610784
Status: Unutilized
Comment: 990 net sq. ft. each, off-site use only.

20 Family Quarters
Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 5702, 5705, 5706, 5714, 5715, 5718, 5723, 5728, 5729, 5731, 5734, 5735, 5740, 5741, 5746, 5749, 5750, 5752, 5755, 5756
Landholding Agency: Army
Property Number: 219610785
Status: Unutilized
Comment: 952 net sq. ft., off-site use only.

36 Family Quarters
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219610786
Status: Unutilized
Comment: 952 net sq. ft., off-site use only.

27 Family Quarters
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219610787
Status: Unutilized
Comment: 887 net sq. ft., off-site use only.

Virginia

Bldg. T00103
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–5000
Landholding Agency: Army
Property Number: 219610789
Status: Unutilized
Comment: 430 sq. ft., presence of asbestos, most recent use—barber shop, off-site use only.

West Virginia

German Ridge Radio Transmitter
Huntington Co: Wayne WV 25701–
Landholding Agency: COE
Property Number: 319610002
Status: Unutilized
Comment: 187 sq. ft. cinder block bldg. on .55 acre in remote area, most recent use—radio equipment room.

Land (by State)

California

U.S. Army Reserve Center
Mountain Lakes Industrial Park
Redding Co: Shasta CA
Landholding Agency: Army
Property Number: 219610645
Status: Unutilized
Comment: 5.13 acres within a light industrial park.

Texas

Castner Range
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219610788
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park.

Suitable/Unavailable Properties

Buildings (by State)

Georgia

Bldg. A1303
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610650
Status: Unutilized
Comment: 2352 sq. ft., needs repair, most recent use—storage/office off-site use only.

Bldg. 1380A
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610651
Status: Unutilized
Comment: 486 sq. ft. trailer, needs rehab, most recent use—office off-site use only.

Bldg. 1380B
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610652
Status: Unutilized
Comment: 450 sq. ft. trailer, needs rehab, most recent use—office off-site use only.

Bldg. D2006
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610653
Status: Unutilized
Comment: 7510 sq. ft., most recent use—photo lab, off-site use only.

Bldg. 2130
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610654
Status: Unutilized
Comment: 9029 sq. ft., most recent use—office off-site use only.

Bldg. 32402
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610656
Status: Unutilized
Comment: 4524 sq. ft., needs repair, most recent use—office, off-site use only.

Bldg. 33601
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610657
Status: Unutilized
Comment: 11626 sq. ft., needs repair, most recent use—office off-site use only.

Bldg. 34701
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610659
Status: Unutilized
Comment: 2780 sq. ft., needs repair, most recent use—office off-site use only.

Bldg. 71505
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610660
Status: Unutilized
Comment: 10230 sq. ft., needs repair, most recent use—storage off-site use only.

Indiana

Bldg. 702
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219610671
Status: Unutilized
Comment: 3110 sq. ft., brick, presence of asbestos, most recent use—telephone exchange.

Bldg. 703
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219610672
Status: Unutilized
Comment: 75191 sq. ft., brick, presence of asbestos, most recent use—admin.

Bldg. 703–A
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219610673
Status: Unutilized
Comment: 557 sq. ft., presence of asbestos, most recent use—boiler shelter.

Bldg. 703–B
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219610674
Status: Unutilized
Comment: 628 sq. ft., most recent use—boiler shelter.

Bldg. 703–C
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219610675
Status: Unutilized
Comment: 540 sq. ft., most recent use—air conditioning plant.

Bldg. 2534
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219610676
Status: Unutilized
Comment: 24960 sq. ft., presence of asbestos, most recent use—manufacturing/office.

Louisiana

Bldg. 710
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219610708
Status: Underutilized
Comment: 3540 sq. ft., needs rehab, most recent use—storage.

Bldg. 717
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219610709
Status: Unutilized
Comment: 3540 sq. ft., needs rehab, most recent use—office.

Bldg. 2375
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219610710
Status: Underutilized
Comment: 675 sq. ft., needs rehab, most recent use—storage.

Bldg. 3506
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219610711
Status: Unutilized
Comment: 1449 sq. ft., needs rehab, most recent use—maintenance.

Maryland

Bldg. 4037
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219610717
Status: Unutilized
Comment: 3663 sq. ft., fair condition, most recent use—gen. insti. bldg.

Bldg. 833
Fort Detrick
Frederick Co: Frederick MD 21702–
Landholding Agency: Army
Property Number: 219610720
Status: Unutilized
Comment: 4546 sq. ft., needs repair, presence of asbestos, most recent use—admin.

North Carolina

Bldg. N–4116, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219610726
Status: Unutilized
Comment: 3944 sq. ft., possible asbestos, most recent use—community bldg., off-site use only.

Texas

Bldg. 443
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610755
Status: Unutilized
Comment: 6836 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 57013
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610759
Status: Unutilized
Comment: 7680 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 2025
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610761
Status: Unutilized
Comment: 80 sq. ft., needs rehab, most recent use—water sup/trt bldg., off-site use only.

Bldg. 2818
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610763
Status: Unutilized
Comment: 1687 sq. ft., needs rehab, most recent use—library, off-site use only.

Bldg. 2810
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610764
Status: Unutilized
Comment: 1665 sq. ft., needs rehab, most recent use—classroom, off-site use only.

Bldg. S–1461
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610772
Status: Unutilized
Comment: 11568 gross sq. ft., presence of asbestos/lead base paint, most recent use—admin., off-site use only.

Bldg. T–5108
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610775
Status: Unutilized
Comment: 512 sq. ft., presence of asbestos/lead base paint, most recent use—admin., off-site use only.

Bldg. T–5114
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610777
Status: Unutilized
Comment: 3612 gross sq. ft., presence of asbestos/lead base paint, most recent use—dining hall, off-site use only.

Bldg. T–5124
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610778
Status: Unutilized
Comment: 3499 gross sq. ft., presence of asbestos/lead base paint, most recent use—dining facility, off-site use only.

Bldgs. P–6088 thru P–6091
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610781
Status: Unutilized
Comment: 465 gross sq. ft. each, presence of lead base paint, needs repair, most recent use—storage, off-site use only.

Bldg. T–6101
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610782
Status: Unutilized
Comment: 400 sq. ft., presence of lead base paint, most recent use—dispatch office, off-site use only.

Land (by State)

North Carolina

.92 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219610728
Status: Underutilized
Comment: Municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone.

10 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone.

257 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone.

Unsuitable Properties

Buildings (by State)

Alaska

Unalakleet Health Clinic
(Former)
Unalakleet AK 99684–
Landholding Agency: GSA
Property Number: 549620007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–F–AK–748.

Hawaii

Bldg. S245, Ford Island
Naval Station Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779620020
Status: Excess
Reason: Extensive deterioration.

Bldg. S246, Ford Island
Naval Station Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779620021
Status: Excess
Reason: Extensive deterioration.

Michigan

Facility 102
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb, MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 135
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620002
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 136
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 163
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 169
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 173
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 318
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 502
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 704
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 706
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 707
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 802
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 816
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 817
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 819
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620015
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 821
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 829
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 831
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620018
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 834
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Facility 838
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

New Hampshire

Bldg. 183
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779620014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 196
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779620015
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 200
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779620016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. TB–4
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779620017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. TB–13
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779620018
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. TB–63
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779620019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

New Mexico

Bldg. 89, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area. Extensive deterioration.

Bldg. 90, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area. Extensive deterioration.

Bldg. 91, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area. Extensive deterioration.

Bldg. 92, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area. Extensive deterioration.

Bldg. 93, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area. Extensive deterioration.

Bldg. 101, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area. Extensive deterioration.

[FR Doc. 96–10903 Filed 5–2–96; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for the Proposed El Rancho Electric Substation, Santa Fe County, NM

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Extension of public comment period on DEIS.

SUMMARY: On March 8, 1996, the Bureau of Indian Affairs (BIA) published in the Federal Register a Notice of Availability and public comment dates for the Draft Environmental Impact Statement (DEIS) for the Proposed El Rancho Electric Substation, Santa Fe County, New Mexico. The BIA now wishes to extend the public comment period for this DEIS.

The proposed BIA action is the approval of a one acre easement on Indian trust land of the Pueblo of San Ildefonso for the Jemez Mountains Electric Cooperative, Inc. to construct a 69/kV electric distribution substation. The Department of Agriculture's Rural Utilities Service (RUS), in turn, is considering the approval of the advance of loan funds for construction of the facilities. The BIA is serving as the lead agency.

This notice is published pursuant to Sec. 1503.1 of the Council on Environmental Quality Regulations (40 CFR, Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Department of Interior Manual (516 DM 1–6), and the environmental policies and procedures of the RUS; and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

DATES: The date by which written comments must arrive at the address given below is extended from May 7, 1996 to May 31, 1996.

ADDRESSES: Send written comments to Mr. Charles Tippeconnic, Bureau of Indian Affairs, Albuquerque Area Office, Branch of Natural Resources, P.O. Box 26567, Albuquerque, New Mexico 87125–6567. Copies of the DEIS may also be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Tippeconnic at the above address, or at (505) 766–3374.

Dated: April 29, 1996.
Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 96–11015 Filed 5–2–96; 8:45 am]
BILLING CODE 4310–02–P

Bureau of Land Management

[NV–06–1990–10]

Environmental Statements; Mule Canyon Gold Mine, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Battle Mountain District of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement for Santa Fe Pacific Gold Corporation's Mule Canyon Mine. This document is available for public review for a 45 day period.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be postmarked by July 10, 1996.

Public meeting to receive oral and written comments has been scheduled for date, time, and place listed below.

- June 5, 1996 at 7:00 p.m., at the Battle Mountain District Office, Battle Mountain, Nevada.
- A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Battle Mountain District Office, ATTN: Christopher Stubbs, Project Manager, P.O. Box 1420, Battle Mountain, Nevada 89820.
- The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada: Lander County Library, Battle Mountain, Nevada: and the University of Nevada Library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Christopher Stubbs, Project Manager at the above Battle Mountain District Address or telephone (702) 635–4000.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from construction and operation of the Mule Canyon Gold Mine. Alternatives analyzed include the Proposed Action, No Action Alternative, East Access Alternative, and the Overburden and Interburden Disposal Area Configuration Alternative. The project would involve construction and operation of a new mine at Mule Canyon with open pits, overburden and interburden ore stockpiles, process facilities, tailings storage facilities, heap leach pads, and related support and ancillary facilities.

Dated: April 29, 1996.
Gerald M. Smith,
District Manager.
[FR Doc. 96–10985 Filed 5–2–96; 8:45 am]
BILLING CODE 4310–HC–M

[NV–930–5700–10; N–60819]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada has been examined and identified as suitable for disposal by direct sale, including the mineral estate with no known value, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 47 N., R. 64 E.,
Sec. 12, NE¼NE¼SW¼,
NW¼NE¼SW¼, NE¼NW¼SW¼.
Comprising 30 acres, more or less.

The above described land is being offered as a direct sale to Elko County. Final determination on disposal will be made after completion of an environmental analysis. Another Notice of Realty Action will be issued at that time.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, 3900 E. Idaho Street, Elko, Nevada.

Upon publication of this Notice of Realty Action in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the Federal Register of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

Interested parties may submit comments to the Elko District Office, Bureau of Land Management, 3900 E. Idaho Street, Elko, NV 89801. Comments shall be submitted by June 19, 1996.

Dated: April 24, 1996.

Robert E. Means,

Acting District Manager.

[FR Doc. 96–10865 Filed 5–02–96; 8:45 am]

BILLING CODE 4310–HC–P

[CO–956–96–1420–00]

Colorado; Filing of Plats of Survey

April 17, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., April 17, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines and the subdivision of sections 3, 4, 5, and 8, Township 46 North, Range 4 West, New Mexico Principal Meridian, Group 1056, Colorado, was accepted April 3, 1996.

This survey was requested by the District Manager, Montrose, to identify boundaries of public lands.

The plat representing the dependent resurvey of portions of the First Guide Meridian West (west boundary) and subdivisional lines, and the subdivision of section 30, Township 50 North, Range 8 West, New Mexico Principal Meridian, Group 1096, Colorado, was accepted April 1, 1996.

This survey was requested by the District Manager, Montrose, to identify boundaries of public lands so that a trail could be re-routed around private land and designated wilderness land and for administrative purposes.

The plat representing the dependent resurvey of a portion of the north boundary (Third Standard Parallel South) and a portion of the subdivisional lines, and the subdivision of sections 11 and 14, Township 51 North, Range 1 East, New Mexico Principal Meridian, Group 1094, Colorado, was accepted April 11, 1996.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivison of sections 27 and 29, Township 15 South, Range 84 West, Sixth Principal Meridian, Group 1094, Colorado, was accepted April 11, 1996.

The plat (in two sheets) representing the dependent resurvey of Mineral Survey No. 13085, The Taylor River Placer and The Taylor River Placer No. 1, Township 14 South and Township 15 South, Range 83 West, Sixth Principal Meridian, Group 9460, Colorado, was accepted April 11, 1996.

The plat representing the dependent resurvey of portions of Tracts 37, 40, and 41, Township 15 South, Range 83 West, Sixth Principal Meridian, Group 1094, Colorado, was accepted April 11, 1996.

These surveys were requested by the U.S. Department of Transportation, Federal Highway Administration, to identify Gunnison National Forest boundaries situated along the Taylor River Canyon, so the location of right-of-way boundaries within the National Forest could be determined. The supplemental plat creating new lots 9 and 10 from original lot in section 11, was accepted April 2, 1996.

This plat was made to satisfy certain administrative needs of this Bureau.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 96–11036 Filed 5–2–96; 8:45 am]

BILLING CODE 4310–JB–P

National Park Service

30 Day Notice of Submission to OMB, Opportunity for Public Comment

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of submission to OMB and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 195 (Public Law 104–13, 44 U.S.C., Chapter 3507(a)(1)(D)) the National Park Service invites public comments on a proposed information collection request (ICR), which has been submitted to OMB for approval. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

The Primary Purpose of the Proposed ICR: To identify characteristics, use patterns, perceptions and preferences of visitors within Perry's Victory and International Peace Memorial. Results will be used by managers in ongoing planning and management to improve services, protect resources and better serve the visitors.

DATES: Public comments will be accepted for thirty days from the date listed at the top of this page in the Federal Register.

ADDRESSES: Send comments to David W. Lime, Ph.D., Senior Research Associate, Cooperative Park Studies Unit, Department of Forest Resources, University of Minnesota, 115 Green Hall 1530 N. Cleveland Ave., St. Paul, MN 55108.

All responses to this notice will be summarized and given to OMB. All comments will become a matter of public record. Copies of the proposed ICR requirement can be obtained from David W. Lime, Ph.D., Senior Research Associate, Cooperative Park Studies Unit, Department of Forest Resources, University of Minnesota, 115 Green Hall 1530 N. Cleveland Ave., St. Paul, MN 55108.

FOR FURTHER INFORMATION CONTACT: Dave Lime, 612–624–2250.

SUPPLEMENTARY INFORMATION:

Title: Visitor Use Study at Perry's Victory and International Peace Memorial.

Form: None.

OMB Number:

Expiration date:

Type of request: Visitor use survey.

Description of need: For Park planning and management.

Description of respondents: Individuals who visit Perry's Victory International Memorial.

Estimated annual reporting burden: 133 burden hours.

Estimated average burden hours per response: 20 minutes.

Estimated average number of respondents: 400.

Estimated frequency of response: Once.

Dated: April 29, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Audit and Accountability Team Office, National Park Service.

[FR Doc. 96–11093 Filed 5–2–96; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings on development of a programmatic environmental impact statement (PEIS).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation is preparing a PEIS for the Yakima River Basin Water Enhancement Project (Enhancement Project), Yakima, Washington. The public meetings will be held to receive comments from interested organizations and individuals on the environmental impacts of the Enhancement Project.

DATES: The public meetings are scheduled from 7:00 to 10:00 p.m. on May 21, 1996, in Yakima, Washington; and on May 22, 1996, in Toppenish, Washington.

ADDRESSES: The meetings will be held at:

- Red Lion Inn, 1507 North First Street, Yakima, Washington; and
- Yakima Indian Nation, Yakima Nation Cultural Center, Eagle Seelatsee Auditorium, 401 Fort Road, Toppenish, Washington.

Written comments are to be submitted to: Area Manager, Bureau of Reclamation, Upper Columbia Area Office, Attention: UCA–1203, P.O. Box 1749, Yakima, Washington 98907–1749.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Upper Columbia Area Office, at the above address, or by telephone at (509) 575–5848 extension 265.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the meetings should contact the Bureau of Reclamation, Upper Columbia Area Office, to announce their intention to participate.

Oral comments at the meetings will be limited to 5 minutes. The meeting facilitator will allow any speaker to provide additional oral comments after all persons wishing to comment have been heard.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the meetings, should be received by Reclamation's Upper Columbia Area Office at the above address by June 21, 1996, for inclusion in the meetings notes.

Dated: April 29, 1996.

James V. Cole,

Area Manager, Upper Columbia Area Office.

[FR Doc. 96–11009 Filed 5–2–96; 8:45 am]

BILLING CODE 4310–94–M

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for part 745, State-Federal cooperative agreements.

DATES: Comments on the proposed information collection must be received by July 2, 1996, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120—SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 745, State-Federal cooperative agreements.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: State-Federal cooperative agreements—30 CFR 745.

OMB Control Number: 1029–0092.

Summary: 30 CFR 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: State governments which regulate coal.

Total Annual Responses: 21.

Total Annual Burden Hours: 14,300.

Dated: April 26, 1996.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–11021 Filed 5–2–96; 8:45 am]

BILLING CODE 4310–05–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the Agency for International Development, Proposed Collections; Comments Requested Correction

AGENCY: Agency for International Development.

ACTION: Correcting form number.

SUMMARY: This document contains correction of form number to the Proposed Collections; Comments Requested for Private Voluntary Organization Annual Return, which was

published on Wednesday, April 10, 1996.

EFFECTIVE DATE: April 23, 1996.

FOR FURTHER INFORMATION CONTACT: Contact Mary Ann Ball, Bureau for Management, Office of Administrative Services, Information Support Services Division, Agency for International Development, Room B930, NS., Washington, DC, (202) 736–4743 or via e-mail MABall@USAID.GOV.

SUPPLEMENTARY INFORMATION: Accordingly, form number is corrected as follows:

Form No.: AID 1550–2 (1/96).

Dated: April 22, 1996.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 96–10987 Filed 5–2–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–732 and 733 (Final)]

Circular Welded Nonalloy Steel Pipe From Romania and South Africa

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION: On November 28, 1995, the Commission instituted the subject investigations and established a schedule for their conduct (61 F.R. 1402, January 19, 1996), which was subsequently revised to reflect the extension by the Department of Commerce of its final determinations in the investigations (61 F.R. 4680, February 7, 1996). The Commission is revising its schedule in these investigations.

The Commission's new schedule for the investigations is as follows: the deadline for filing prehearing briefs is May 8, 1996; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 14, 1996; and the deadline for filing posthearing briefs, the date that the Commission will make its final release of information, and the deadline for filing final party comments will be announced at the Commission's hearing.

For further information concerning these investigations see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: April 29, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11084 Filed 5–2–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–745 (Preliminary)]

Steel Concrete Reinforcing Bars From Turkey

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that a regional industry in the United States is threatened with material injury by reason of imports from Turkey of steel concrete reinforcing bars, provided for in subheadings 7213.10.00 and 7214.20.00 of the Harmonized Tariff Schedule of the United States,[3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 8, 1996, a petition was filed with the Commission and the Department of Commerce by Ameristeel Corporation,[4] Tampa, FL, and New Jersey Steel Corporation, Sayreville, NJ, alleging that a regional industry in the United States is materially injured by reason of LTFV imports of rebar from Turkey. Accordingly, effective March 8, 1996, the Commission instituted antidumping Investigation No. 731–TA–745 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 18, 1996 (61 F.R. 11063). The conference was held in Washington, DC, on March 29, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 22, 1996. The views of the Commission are contained in USITC Publication 2955 (April 1996), entitled ''Steel Concrete Reinforcing Bars from Turkey: Investigation No. 731–TA–745 (Preliminary).''

By order of the Commission.

Issued: April 24, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11083 Filed 5–2–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Peter S. Watson and Commissioner Carol T. Crawford dissenting.

[3] For purposes of this investigation, steel concrete reinforcing bar (rebar) is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar, rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes plain-round rebar, rebar that a processor has further worked or fabricated, and all coated rebar.

[4] Formerly Florida Steel Corporation.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Revision of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Refugee/Asylee Relative Petition.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–730. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data collected on this form is used by the Service to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 30, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–11092 Filed 5–2–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Correction Notice

AGENCY: Office of the Secretary, DOL.

ACTION: Correction.

SUMMARY: In notice document 96–10067 beginning on page 18158 in the issue of Wednesday, April 24, 1996, make the following correction:

This document is hereby withdrawn and deleted in its entirety. The document was a duplication and should not have been published.

Dated: April 30, 1996.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–11043 Filed 5–2–96; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume III

South Carolina:
SC960029 (MAY 03, 1996)
SC960031 (MAY 03, 1996)
SC960032 (MAY 03, 1996)
SC960034 (MAY 03, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT960001 (Mar. 15, 1996)
CT960003 (Mar. 15, 1996)
CT960004 (Mar. 15, 1996)
Massachusetts:
MA960001 (Mar. 15, 1996)
MA960003 (Mar. 15, 1996)
MA960007 (Mar. 15, 1996)
MA960010 (Mar. 15, 1996)
MA960016 (Mar. 15, 1996)
MA960017 (Mar. 15, 1996)
MA960018 (Mar. 15, 1996)
MA960019 (Mar. 15, 1996)
MA960020 (Mar. 15, 1996)
MA960021 (Mar. 15, 1996)
New Jersey:
NJ960002 (Mar. 15, 1996)
NJ960003 (Mar. 15, 1996)
NJ960004 (Mar. 15, 1996)
NJ960015 (Mar. 15, 1996)
New York:
NY960001 (Mar. 15, 1996)

Volume II

District of Columbia:
DC960001 (Mar. 15, 1996)
DC960003 (Mar. 15, 1996)
Maryland:
MD960001 (Mar. 15, 1996)
MD960002 (Mar. 15, 1996)
MD960006 (Mar. 15, 1996)
MD960012 (Mar. 15, 1996)
MD960013 (Mar. 15, 1996)
MD960015 (Mar. 15, 1996)
MD960021 (Mar. 15, 1996)
MD960031 (Mar. 15, 1996)
MD960034 (Mar. 15, 1996)
MD960036 (Mar. 15, 1996)
MD960037 (Mar. 15, 1996)
MD960039 (Mar. 15, 1996)
MD960043 (Mar. 15, 1996)
MD960046 (Mar. 15, 1996)
MD960047 (Mar. 15, 1996)
MD960050 (Mar. 15, 1996)
MD960053 (Mar. 15, 1996)
MD960055 (Mar. 15, 1996)
MD960058 (Mar. 15, 1996)
Virginia:
VA960003 (Mar. 15, 1996)
VA960006 (Mar. 15, 1996)
VA960007 (Mar. 15, 1996)
VA960009 (Mar. 15, 1996)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 26th day of April 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–10798 Filed 5–2–96; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public meeting.

TIME AND DATES:

Thursday, May 16, 1996; 9:00 a.m. to 5:00 p.m. and

Friday, May 17, 1996; 9:00 a.m. to 12:00 p.m.

PLACE: Hilton Palacio del Rio, Meeting Room: Salon del Rey North, 200 South Alamo Street, San Antonio, Texas 78205–3299, Telephone Number: (210) 222–1400.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Consumer bankruptcy law, related issues and general administrative matters for the Commission, including future meetings, hearings and substantive agenda.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, D.C. 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 96–10980 Filed 5–2–96; 8:45 am]

BILLING CODE 6820–36–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

[Docket No. 50–160–Ren; ASLBP No. 95–704–01–Ren]

Georgia Institute of Technology, Atlanta, Georgia; Georgia Tech Research Reactor; (Renewal of Facility License No. R–97)

April 24, 1996.

Notice of Evidentiary Hearing

This proceeding concerns the proposed renewal of the facility operating license for the Georgia Tech Research Reactor, a 5 MW research reactor located on the campus of the Georgia Institute of Technology in the city of Atlanta, Fulton County, Georgia. Notice is hereby given that, as set forth in the Atomic Safety and Licensing Board's Memorandum and Order (Telephone Conference Call, 2/29/96; Hearing Schedules), dated March 13, 1996, the evidentiary hearing in this proceeding will commence on Monday, May 20, 1996, at the Federal Trade Commission hearing room Room 1010, 1718 Peachtree Street NW, Atlanta, Georgia, beginning at 9:30 a.m. The hearing will continue, to the extent necessary, on May 21–24, 1996, at that same location, beginning at 9:00 a.m. each day. (The sessions are expected to adjourn at approximately 5:00 p.m. daily.)

Sessions will continue, to the extent necessary, on May 29–31 and June 24–28, 1996, beginning at 9:30 a.m. on Wednesday May 29, 1996 and Monday, June 24, 1996 and at 9:00 a.m. on May 30–31 and June 25–28, at the same location. Those sessions are also expected to adjourn at approximately 5:00 p.m. daily.

As provided by 10 CFR 2.743(b)(1), direct testimony of the parties (to the extent required by the Licensing Board in its March 13, 1996 Memorandum and Order) must be filed (mailed) by Friday, May 3, 1996, for Georgia Tech and GANE (May 7 if served by express mail) and by Friday, May 31, 1996, for the NRC Staff (June 4 is served by express mail).

Notice is also hereby given that, in accordance with 10 CFR 2.75(a), the Licensing Board will hear oral limited appearance statements on Monday morning, May 20, 1996, from approximately 10:00 a.m. to 11:00 a.m., at the aforementioned hearing room; and on Wednesday evening, May 22, 1996, from 7:00 p.m. to 9:00 p.m. (or such lesser time as is necessary to accommodate speakers who are

present), at the Student Center Theatre, Georgia Institute of Technology, Atlanta, Georgia. The Board will consider holding an additional session on Wednesday evening, May 29, 1996, to the extent that such a session appears to be warranted by public demand, at a time and place to be announced.

Any person not a party to the proceeding will be permitted to make such a statement, setting forth his or her position on the issues. The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) These statements do not constitute testimony or evidence but may assist the Licensing Board and parties in defining the scope of the issues in the proceeding.

Requests to make oral statements may be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of each such request should also be submitted to the Chairman of this Licensing Board, ASLBP, T–3 F23, Washington, DC 20555.

Documents relating to this proceeding are on file at the Commission's Local Public Document Room, located at the Decatur Library, 215 Sycamore Street, Decatur, Georgia 30030 (telephone 404–370–3070), as well as at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037.

Dated: April 24, 1996.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 96–11045 Filed 5–2–96; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–146]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Approving License Transfer and License Amendment; Saxton Nuclear Experimental Corporation; Saxton Nuclear Experimental Facility

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order approving tranfer and license amendment to Amended Facility License No. DPR–4 issued to the Saxton Nuclear Experimental Corporation (SNEC) for possession of the Saxton Nuclear Experimental Facility (SNEF) located in Saxton, Bedford County, Pennsylvania. The SNEF is a small [28MW(t)] pressurized-water reactor that ceased operation in May 1972. The reactor has been defueled, the fuel has been removed from the site, and the reactor coolant system has been drained.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the amended facility license and technical specifications to add GPU Nuclear Corporation (GPU Nuclear) as a licensee for the SNEF along with SNEC and transfer from SNEC to GPU Nuclear all management-related responsibilities for the SNEF. The proposed action is in accordance with SNEC's application, dated November 21, 1995, as supplemented on March 13, 1996, with which GPU Nuclear concurs. GPU Nuclear is currently performing or managing all activities at the SNEF under contract to SNEC. Taking this action allows GPU Nuclear to conduct activities at the SNEF without the additional step of acting as a contractor.

Need for Proposed Action

The proposed action is needed to reflect the addition of GPU Nuclear as a licensee and transfer the responsibilities discussed above.

Environmental Impact of the Proposed Action

The proposed action would change the license to add GPU Nuclear as a licensee and would transfer, from SNEC to GPU Nuclear, all management-related responsibilities for the SNEF. The action is administrative in that the activities required by the license are not changed with the addition of GPU Nuclear as a licensee.

The Commission has evaluated the environmental impact of the proposed action. The scope of work at the SNEF, the probability or consequences of accidents, radiological releases from the facility, and occupational exposure will not be changed by this action. Further, the numbers and qualifications of personnel at the SNEF will not change as a result of this action. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the addition of GPU Nuclear as a licensee for the SNEF and the transfer of management-related responsibilities would not affect nonradiological effluents and would have no other environmental impact.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the request for license transfer and amendment, which would force GPU Nuclear to remain a contractor to SNEC. This would not change the amount or scope of activities at the SNEF; therefore, denial of the application would not change current environmental impacts.

Alternative Use of Resources

No alternatives appear that will have different or lesser effect on the use of available resources.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted with the Pennsylvania State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For detailed information with respect to this proposed action, see the application for amendment and transfer of license dated November 21, 1995, as supplemented on March 13, 1996. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20037 and at the local public document room located at the Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678.

Dated at Rockville, Maryland, this 25th day of April 1996.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–11044 Filed 5–2–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request Extension of Standard Form 113–A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces the OPM intends to submit a request to the Office of Management and Budget (OMB) for renewal of authority to collect data for the Monthly Report of Federal Civilian Employment (SF 113–A). The information that is collected provides a timely count of Governmentwide employment, payroll, and turnover data. Uses of the data include monthly reporting to OMB and publishing the bimonthly *Federal Civilian Workforce Statistics—Employment and Trends:* answering data requests from the Congress, White House, other Federal agencies, the media, and the public; providing employment counts required by OMB; and serving as benchmark data for quality control of the Central Personnel Data File. The number of responding agencies is 130. The report is submitted 12 times a year. The total number of person-hours required to prepare and transmit the reports annually is estimated at 3,120.

For copies of the clearance package, call James M. Farron, Reports and Forms Manager, on (202) 418–3208, or by e-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received by no later than July 2, 1996.

ADDRESSES: Send or deliver comments to: May Eng, U.S. Office of Personnel Management, Room 7439, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684, U.S. Office of Personnel Management..

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–10931 Filed 5–2–96; 8:45 am]

BILLING CODE 6325–01–M

Proposed Collection: Comment Request; (OPM Form 1622)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of a revised employment information collection. The form is used in conjunction with Project ABLE (ABLE BENEFICIARIES' LINK to EMPLOYERS). OPM Form 1622, ''Project ABLE Enrollment Form'' is used by authorized State Vocational Rehabilitation Counselors. The Social Security Administration identifies those persons who may complete the enrollment process. Information on eligible enrollees is stored in OPM's Automated Applicant Referral System (AARS). Project ABLE is designed to enhance Federal job opportunities for people with disabilities who are job ready and want to work.

Planned revision is to allow for enrollment form to capture information regarding enrollee TDD access information, when it is required. Original OMB approval expires in June 1996.

We estimate no more than 1,000 enrollments will be processed annually. Each form takes approximately 5 minutes (.08 hours) to complete. The annual estimated burden is 80 hours. For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received by no later than July 2, 1996.

ADDRESS: Send or deliver comments to: Armando E. Rodriguez, Director, Employment Service, Office of Diversity, U.S. Office of Personnel Management, 1900 E Street NW., Room 6332, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: John Riedel-Alvarez, Office of Diversity, (202) 606–1059.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–10932 Filed 5–2–96; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on April 8, 1996 (61 FR 15529). Individual authorities established or revoked under Schedules A and B and established under Schedule C between March 1, 1996, and March 31, 1996, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established in March 1996.

The following Schedule A authority was revoked:

Federal Deposit Insurance Corporation

Not to exceed 300 positions in field offices of the Resolution Trust Corporation. Effective March 22, 1996.

Schedule B

No Schedule B authorities were established or revoked in March 1996.

Schedule C

The following Schedule C authorities were established in March 1996.

Agency for International Development

Congressional Liaison Officer to the Deputy Assistant Administrator. Effective March 26, 1996.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective March 21, 1996.

Special Assistant to the Commissioner. Effective March 21, 1996.

Council on Environmental Quality

Special Assistant to the Chair, Council on Environmental Quality. Effective March 18, 1996.

Associate Director for Toxics and Environmental Protection to the Chair. Effective March 18, 1996.

Department of Agriculture

Special Assistant to the Administrator, Cooperative State Research Education, and Extension Service. Effective March 13, 1996.

Confidential Assistant to the Under Secretary for Natural Resources and Environment. Effective March 13, 1996.

Confidential Assistant to the Director, Legislative Affairs and Public

Information Staff. Effective March 13, 1996.

Department of the Army (DOD)

Special Assistant for Policy to the Executive Staff Assistant. Effective March 11, 1996.

Department of Commerce

Speechwriter to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective March 1, 1996.

Special Assistant to the Deputy Assistant Secretary for International Economic Development. Effective March 1, 1996.

Confidential Assistant to the Deputy Assistant Secretary for Environmental Technologies Exports. Effective March 1, 1996.

News Analyst to the Director, Office of Public Affairs. Effective March 18, 1996.

Department of Defense

Assistant for China to the Deputy Assistant Secretary of Defense, Asian and Pacific Affairs. Effective March 7, 1996.

Executive Director (House Affairs) to the Assistant Secretary of Defense (Legislative Affairs). Effective March 7, 1996.

Executive Assistant to the Physician to the President. Effective March 8, 1996.

Director of Requirements to the Deputy Assistant Secretary of Defense (Requirements and Plans). Effective March 20, 1996.

Department of Education

Liaison for Community and Junior Colleges to the Assistant Secretary for Vocational and Adult Education. Effective March 5, 1996.

Confidential Assistant to the Director Scheduling and Briefing. Effective March 6, 1996.

Special Assistant to the Assistant Secretary (Office of Elementary and Secondary Education). Effective March 7, 1996.

Special Assistant/Chief of Staff to the Assistant Secretary, Office of Elementary and Secondary Education. Effective March 18, 1996.

Department of Health and Human Services

Director, Secretarial Briefing and Policy Coordinator to the Executive Secretary. Effective March 5, 1996.

Director, Office of Media Relations to the Associate Administrator for External Affairs. Effective March 13, 1996.

Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation, Human Services Policy. Effective March 21, 1996.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary, Community Planning and Development. Effective March 8, 1996.

Special Assistant to the Assistant Secretary for Public Affairs. Effective March 13, 1996.

Staff Assistant to the Senior Advisor to the Secretary. Effective March 18, 1996.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective March 26, 1996.

Department of Justice

Public Affairs Specialist to the Director, Office of Public Affairs. Effective March 13, 1996.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective March 28, 1996.

Department of Labor

Special Assistant to the Counselor to the Secretary. Effective March 1, 1996.

Staff Assistant to the Secretary of Labor. Effective March 13, 1996.

Special Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective March 27, 1996.

Department of State

Policy Analyst to the Assistant Secretary, Oceans and International Environmental and Scientific Affairs. Effective March 29, 1996.

Department of Transportation

Director for Drug Enforcement and Program Compliance to the Chief of Staff. Effective March 7, 1996.

Deputy Director of Congressional Affairs to the Director, Office of Congressional Affairs. Effective March 18, 1996.

Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective March 18, 1996.

Special Assistant to the Deputy Administrator, National Highway Traffic Safety Administration. Effective March 18, 1996.

Special Assistant to the Administrator, Federal Highway Administration. Effective March 28, 1996.

Department of the Treasury

Assistant to the Commissioner of Internal Revenue. Effective March 7, 1996.

Policy Advisor to the Under Secretary (Enforcement). Effective March 27, 1996.

Department of Veterans Affairs

Special Assistant to the Secretary of Veterans Affairs. Effective March 1, 1996.

Export-Import Bank of the United States

Administrative Assistant to the Director, Member of the board. Effective March 7, 1996.

Federal Mine Safety and Health Review Commission

Attorney-Advisor (General) to the Chairman. Effective March 22, 1996.

General Services Administration

Special Assistant to the Commissioner, Public Buildings Service, Effective March 21, 1996.

Special Assistant to the Administrator. Effective March 26, 1996.

National Aeronautics and Space Administration

Executive Assistant to the Administrator, National Aeronautics and Space Administration. Effective March 28, 1996.

National Credit Union Administration

Writer-Editor to the Chairman. Effective March 22, 1996.

Office of Management and Budget

Legislative Assistant to the Associate Director for Legislative Affairs. Effective March 28, 1996.

Office of Personnel Management

Special Assistant to the Director, Office of Congressional Relations. Effective March 18, 1996.

Small Business Administration

Special Assistant to the Deputy Administrator to the Assistant Deputy Administrator for Economic Development. Effective March 18, 1996.

Surface Transportation Board (DOT)

Staff Advisor (Management) to the Commissioner. Effective March 7, 1996.

U.S. Arms Control and Disarmament Agency

Secretary (Office Automation) to the Assistant Director, Strategic and Eurasian Affairs Bureau. Effective March 21, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–10933 Filed 5–2–96; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Financial Disclosure Statement.
(2) *Form(s) submitted:* G–423.
(3) *OMB Number:* 3220–0127.
(4) *Expiration date of current OMB clearance:* June 30, 1996.
(5) *Type of request:* Revision of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 2,100.
(8) *Total annual responses:* 2,100.
(9) *Total annual reporting hours:* 2,975.
(10) *Collection description:* Under the Railroad Retirement and the Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–10982 Filed 5–2–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21922; 812–9776]

The Brinson Funds, et al.; Notice of Application

April 29, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Brinson Funds (the ''Fund'') on behalf of its series (the ''Public Funds''); Brinson Relationship Funds (the ''Trust'') on behalf of its series (the ''Series''), and Brinson Partners, Inc. (the ''Adviser''). Applicants request that any relief granted pursuant to this application also apply to any subsequently created Public Fund or Series for which the Adviser, any entity resulting from the Adviser changing its jurisdiction or form of organization, or any entity controlling, controlled by, or under common control with the Adviser serves as investment advisers.

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting an exemption from sections 12(d)(1) (A) and (B), and under sections 6(c) and 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: The requested order would permit each Public Fund to invest a portion of its assets in the Series.

FILING DATES: The application was filed on September 21, 1995, and was amended on December 4, 1995, March 15, 1996, April 10, 1996, and April 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 209 South LaSalle Street, Chicago, Illinois 60604–1295.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Delaware business trust registered under the act as an open-end management investment company. The Funds currently consists of ten Public Funds: one equity and income fund (Global Fund), three equity funds (Global Equity Fund, U.S. Equity Fund, and Non-U.S. Equity Fund), four fixed income funds (Global Bond Fund, Short-Term Global Income Fund, U.S. Bond Fund, and Non-U.S. Bond Fund), one balanced fund (U.S. Balanced Fund), and one money market fund (U.S. Cash Management Fund). Each Public Fund offers two classes of shares: the Brinson Fund class shares, which have no sales charge and are not subject to a distribution fee imposed in accordance with rule 12b–1 under the Act (a ''12b–1 Fee''), and the SwissKey Fund class shares, which have not sales charge but are subject to a 12b–1 Fee. Fund/Plan Broker Services, Inc. (''FPBS'') acts as distributor of the Fund. FPBS does not receive any payment from the Public Funds for its services as distributor. Rather, the Adviser pays FPBS a fixed annual fee for the distribution services it provides to the Public Funds.

2. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Trust currently consists of six Series: Brinson Global Securities Fund, Brinson Short-Term Fund, Brinson Post-Venture Fun, Brinson High Yield Fund, Brinson Emerging Markets Equity Fund, and Brinson Emerging Markets Debt Fund. Investment in the Series is limited to ''accredited investors'' within the meaning of Regulation D under the Securities act of 1933. The Series impose no sales charge, advisory fee, or 12b–1 Fee. Because shares of the Series are issued solely in private placement transactions, the Trust does not have a distributor.

3. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser provides investment advisory services to each Public Fund and receives a fee for such services under the Adviser's investment advisory agreement with the Fund. The Adviser provides investment advisory services to each Series of the Trust, but it does not receive any compensation for these services under its investment advisory agreement with the Trust. Fund/Plan Services, Inc. (''Fund/Plan'') provides administrative and transfer agency services to both the Fund and the Trust.

4. Applicants propose that, subject to the conditions to the requested order, the Public Funds be permitted to purchase and redeem shares of the Series, and that each Series be permitted to sell shares to, and redeem shares from, each of the Public Funds. The Public Funds would invest a portion of their assets in Series that primarily invest in certain securities (each Series in which a Public Fund invests in reliance on the requested order is referred to herein as a ''Target Series'').[1]

5. Each Public Fund may invest directly in debt and equity securities of emerging market issuers (''Emerging Market Securities''), equity securities of small capitalization issuers (''Small Cap Securities''), and/or high yield securities, as consistent with the Public Fund's investment objectives and policies. Applicants believe that investors in the Public Funds may obtain substantial benefits if the Public Funds invest that portion of their assets they currently invest directly in Emerging Market Securities, Small Cap Securities, and high yield securities in the Series that primarily invest in such securities.[2]

6. Solely in instances where a Public Fund holds portfolio securities that would be appropriate investments for a Series, the Public Fund may invest in the Series by transferring securities and cash in the Public Fund's portfolio to the corresponding Series in exchange for shares of the Series. In addition, the Series may pay redeeming shareholders, including the Public Funds, in-kind with a *pro rata* distribution of the Series' portfolio securities rather than cash. These in-kind purchases or redemptions will comply with the provisions of rule 17a–7 (a) through (f) under the Act, except for the requirement under subparagraph (a) that the transaction be for no consideration other than cash payment.

7. The Public Funds will retain the ability to invest their assets directly in securities as authorized by their respective investment objectives and policies. Thus, if the Adviser believes that it can more economically invest a Public Fund's assets directly in a particular type of security, then such direct investment will be made. In addition, each Series reserves the right to discontinue selling shares to any Public Fund if the Trust's board of trustees determines that sales of Series shares to the Public Funds would adversely affect the Series' portfolio management and operations.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transaction if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) (A) and (B) to permit the Public Funds to invest in shares of the Series.

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses which might arise when one investment company acquires shares of another investment company. These abuses include the unnecessary duplication of costs (such as sales charges, distribution fees, advisory fees, and administrative costs), undue influence by the fund holding company over its underlying funds, and the threat of large scale redemptions of the securities of the underlying investment companies.

4. Applicants believe that none of these potential or actual abuses are present in the proposed arrangement. Applicants assert that the Public Funds' investment in the Series will not result in duplicative distribution, portfolio management, fund administration, or operating costs. Investors in the Public Funds will not pay duplicative advisory fees because the Adviser does not receive any compensation for the investment advisory services it provides to the Series. The administration and accounting fees (both of which are asset-based) paid by the Public Funds to Fund/Plan will be reduced by an amount equal to the administration and accounting fees attributable to the Public Funds' investments in the Series. While one of the Series (Brinson Emerging Markets Equity Fund) assesses a redemption fee, applicants agree that any investment by the Public Funds in that Series will not be subject to the redemption fee. Because Fund/Plan receives a fixed annual fee from each Series for providing transfer agency services, Fund/Plan will not receive increased transfer agency fees as a result of the proposed transaction.

5. Applicants assert that the proposed arrangement will not result in disruptive or manipulative redemptions by the Public Funds of shares of the Series, since the Public Funds and the Series are part of the same ''group of investment companies'' as defined in rule 11a–3 under the Act. Applicants also assert that there is no risk that the Public Funds will exercise inappropriate control or undue influence over the management of the Trust. For these reasons, applicants submit that the requested order exempting applicants from section 12(d)(1) meets the standards of section 6(c).

B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to sell securities to, or purchase securities from, the company. Each Public Fund and Series may be considered an affiliated person of the other, within the meaning of section 2(a)(3) of the Act, because each is advised by the Adviser, and thus could be considered under common control. Accordingly, a Series' sale of its shares to a Public Fund, and the redemption of such shares, may be considered a purchase and sale prohibited by section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general provision of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Series to sell their shares to the Public

[1] It is presently anticipated that the Public Funds will invest in the following Series: the Brinson Emerging Markets Equity Fund, the Brinson Emerging Markets Debt Fund, the Brinson Post-Venture Fund, and the Brinson High Yield Fund.

[2] While the Public Funds request relief to invest in the Series in order to obtain exposure to these three asset classes, it is likely that the Fund will create new Public Funds in the future that may seek to obtain exposure to different and additional asset classes through investment in the Series.

Funds, and to permit the Public Funds to redeem shares of the Series.[3]

3. Applicants state that the terms of the proposed transactions are reasonable and fair, and do not involve overreaching. The consideration paid and received for the sale and redemption of shares of the Series will be based on the net asset value of those Series' shares. In addition, the Series will not charge the Public Funds any sales charge, redemption fee, or 12b–1 Fee, and Brinson does not receive any advisory fee for serving as adviser to the Series.

4. Applicants assert that the proposed transactions will be consistent with the policies of each Public Fund, as the Public Funds will amend the Fund's investment restrictions and policies to permit the proposed transactions. Applicants also assert that the proposed transactions are consistent with the general purposes of the Act.

5. Applicants believe that investing in the Series will permit the Public Funds more efficiently to obtain exposure to a broadly diversified portfolio of securities at lower cost than investing directly. For example, transaction and custodial fees associated with Emerging Markets Securities are relatively high as compared to securities of U.S. issuers. Consequently, it is more economical to invest one portfolio of Emerging Markets Securities rather than several. The Public Funds' investment in the Series may also result in greater efficiency in the Public Funds' portfolio management. For example, because of the large number of small company issuers and the difficulty of obtaining information about these issuers, following a large number of such issuers is extremely time-consuming for portfolio managers. Where a Public Fund allocates a fairly small percentage of its assets to investment in Small Cap Securities, the Public Fund can achieve exposure to these securities by investing in the Brinson Post-Venture Fund, without the Public Fund's portfolio managers spending a disproportionate amount of time following individual Small Cap Securities.

6. Applicants also state that Public Funds, by investing in the Series, will gain exposure to a far greater range of issuers than would be possible by investing directly. Applicants anticipate that greater diversification will result in lower risk and volatility, and greater price stability of investments in these securities. For these reasons and the reasons discussed above, applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Public Funds and the Series will be part of the same ''group of investment companies,'' as defined in rule 11a–3 under the Act.

2. No Target Series shall acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of a Public Fund will not be ''interested persons'' of the Public Fund, as defined in section 2(a)(19) of the Act.

4. Brinson will not charge any advisory fee for serving as adviser to the Series.

5. Any sales charges or service fees charged with respect to securities of a Public Fund, when aggregated with any sales charges or service fees paid by the Public Fund with respect to shares of the Target Series, shall not exceed the limitations set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. The applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets of each Public Fund and each of its Target Series; monthly purchases and redemptions (other than by exchange) for each Public Fund and each of its Target Series; monthly exchanges into and out of each Public Fund and each of its Target Series; month-end allocations of each Public Fund's assets among its Target Series; annual expense ratios for each Public Fund and each of its Target Series; and a description of any vote taken by the shareholders of any Target Series, including a statement of the percentage of votes cast for and against the proposal by the Public Fund and by the other shareholders of the Target Series. Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Public Fund (unless the Chief Financial Analyst shall notify the applicants in writing that such information need no longer be submitted).

[3] Applicants request relief under section 6(c) as well as under section 17(b) because they wish to engage in a series of transactions rather than a single transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11035 Filed 5–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26510]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 26, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 20, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8733)

The Southern Company (''Southern''), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a registered holding company, and its subsidiaries, SEI Holdings, Inc. (''Holdings''), Southern Electric International, Inc. (''SEI''), Mobile Energy Services Holdings, Inc. (''Mobile Energy''), Southern Electric Wholesale Generators, Inc. (''Domestic Holdings''), SEI Europe, Inc. (''SEI Europe''), and SEI NEWCO 1, Inc. (''Foreign Holdings''), all at 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, have filed a post-effective amendment under sections 3(b) and 12(c) of the Act and rules 46 and

54 thereunder, in connection with their previously filed application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(f), 13, 32 and 33 of the Act and rules 43, 45 and 54 thereunder.

By order dated February 2, 1996, (HCAR No. 26468) (''Initial Order''), the Commission authorized Southern, Holdings, SEI, Mobile Energy, Domestic Holdings, SEI Europe, and Foreign Holdings to carry out certain transactions involved in the restructuring of Southern's portfolio of EWGs, FUCOs (collectively, ''Exempt Projects''), and related intermediate subsidiaries (called ''Intermediate Subsidiaries'').[1]

The applicants now seek a modification to the Initial Order that would allow Holdings and its direct and indirect subsidiaries (other than Exempt Projects, which are exempt from the Act) to declare and pay dividends from time to time through December 31, 2000, out of capital and unearned surplus. The applicants state that such distributions would be made only to the extent permitted under applicable law, as well as any applicable financing agreements, which restrict distributions to shareholders, to which Holdings or any of its subsidiaries may be a party.

In addition, the applicants propose that current or future subsidiary companies of Holdings that derive no material part of their income from sources with the United States be exempted, pursuant to section 3(b) of the Act, from section 12(c) and rule 46 thereunder.

The applicants also request an extension of time until June 30, 1997, to consummate the following transactions that were authorized in the Initial Order: (1) The transfer of Southern Electric's common stock to Holdings; (2) the transfer of the stock of certain subsidiaries of Southern Electric to other direct or indirect subsidiaries of Holdings; and (3) the issuance by Mobile Energy to Southern of a series of preferred stock and contribution thereof by Southern to Holdings.

[1] In particular, Holdings was authorized to acquire one or more special ''Intermediate Subsidiaries,'' organized exclusively for the purpose of acquiring and holding one or more EWGs or FUCOs, or subsidiaries (called ''Energy Related Companies'') that derive or will derive substantially all of their revenues from the ownership and/or operation of one or more of the following categories of nonutility businesses: (a) ''Qualifying facilities'' (defined under the Public Utilities Regulatory Policies Act of 1978, as amended; (b) steam production, conversion and distribution; and (c) electricity brokering and marketing within the area covered by the Southern Electric Reliability Counsel (''SERC''). Holdings was also authorized to acquire the shares of SEI and to acquire the securities of one or more direct or indirect subsidiaries organized to engage in the activities in which SEI previously had been authorized to engage.

Northeast Utilities, et al. (70–8825)

Northeast Utilities (''NU''), a registered holding company, and its subsidiary companies, Western Massachusetts Electric Company and The Quinnehtuk Company, at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, Northeast Utilities Service Company (''NUSCO''), The Connecticut Light and Power Company, Northeast Nuclear Energy Company and The Rocky River Realty Company, at 107 Selden Street, Berlin, Connecticut 06037, North Atlantic Energy Service Corporation, Route 1, Lafayette Road, Seabrook, New Hampshire 03874, and North Atlantic Energy Corporation and Public Service Company of New Hampshire, 100 Elm Street, Manchester New Hampshire 03105, (collectively, ''Applicants'') have filed an application-declaration under sections 6(a), 7, 9(a), 10, 11(b), 12(b) and 13(b) of the Act and rules 45, 53, 54, 87(b)(1), 90 and 91 thereunder.

The Applicants propose to engage in certain diversification activities, both inside and outside of NU's operating utility subsidiaries' service territories, either directly or through investments in existing or future subsidiary companies or joint ventures/alliances with nonassociate companies (collectively, ''NEWCOs'').

Diversification activities may include research, development, commercialization, financing, marketing, sale, leasing, licensing, and maintenance, as appropriate, of: (1) various products including electrotechnologies; (2) electric utility or telecommunications services; (3) ''qualifying facilities'' within the meaning of the Public Utility Regulatory Policies Act of 1978 as amended; (4) electric appliances and lighting systems; (5) electric vehicles; (6) thermal energy products; (7) alternative fuels; (8) renewable energy resources; and (9) financial products. Diversification activities may also include the performance of engineering, construction, fuel storage, procurement, transportation, environmental, financial, management, personnel development and training, and similar services.

Applicants further propose: (1) To organize NEWCOs; (2) to provide services to NEWCOs and for NEWCOs to provide services among themselves and to Applicants on terms that may or may not be limited to cost; (3) to provide capital contributions to the NEWCOs; (4) to issue guarantees of NEWCO securities; and (5) that NU issue guarantees of other Applicants' securities.

The applicants seek authority through December 31, 2000 to form NEWCOs and to invest, directly or indirectly, up to $300 million in diversification activities, as stated above, through a combination of equity, debt, and guarantee obligations. Any loans from NU to the other Applicants or NEWCOs will mature no later than December 31, 2015 and will bear an interest rate not exceeding the prevailing rates for loans of similar term and risk.

The application-declaration states that each NEWCO will maintain separate financial records and detailed supporting records, including profit/loss statements. NUSCO, pursuant to a service agreement with each NEWCO, proposes to provide recordkeeping, accounting and audit services.

General Public Utilities Corporation, et al. (70–8835)

General Public Utilities Corporation (''GPU''), a registered holding company, 100 Interpace Parkway, Parsippany, New Jersey 07054, and its wholly owned electric public-utility subsidiary company Jersey Central Power & Light Company (''JCP&L''), 300 Madison Avenue, Morristown, New Jersey 07960, have filed an application under sections 9(a) and 10 of the Act.

JCP&L proposes to invest from time to time through December 31, 2000 up to $500,000 in the New Jersey Fund for Community Economic Development (''Fund''). The Fund has been organized as a New Jersey limited liability company to provide financing to local development organizations which, in turn, will provide loans to businesses, projects and individuals in low and moderate income urban areas in New Jersey which do not satisfy traditional lending criteria of financial institutions. It is contemplated that local development organizations will receive funds from the Fund through medium and long-term financing structures which will enable these organizations to make investments in economic development projects located in their communities. The Fund will have a term of at least ten years.

The New Jersey Economic Development Authority will manage the Fund under the supervision of the Fund's board of trustees. The board will also appoint a loan review committee to evaluate all funding request proposals from eligible local development organizations.

The Fund will have both Class A and Class B members. There will be a maximum of 12 Class A members, consisting of three representatives of the

state of New Jersey with the balance consisting of members whose membership interests in the Fund exceed 10%. All other investors, including JCP&L, will be Class B members. JCP&L's Class B membership interest in the Fund will not exceed 9.9% of the Fund's total membership interests. All members will vote in proportion to their membership interests, provided that only Class A members may vote on investment policies and other matters to be specified in the Fund's operating agreement. The Fund will be capitalized over a five to seven-year period with a minimum of $20 million invested by the private sector and an additional $10 million from the State of New Jersey.

In lieu of an investment by JCP&L, the investment in the Fund may be made in whole or in part by GPU either directly or indirectly through a new subsidiary to be formed (''GPU Sub''). If the acquisition is made by GPU indirectly through GPU Sub, GPU would acquire up to 1,000 shares of common stock of GPU Sub for a purchase price not in excess of $1,000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10996 Filed 5–2–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Testing Modifications to the Disability Determination Procedures; Test Sites for Single Decisionmaker Model

AGENCY: Social Security Administration.

ACTION: Notice of the test sites and the duration of tests involving a single decisionmaker.

SUMMARY: The Social Security Administration is announcing the locations and the duration of tests that it will conduct under the final rules published in the Federal Register on April 24, 1995 (60 FR 20023). These final rules authorize the testing of several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and claims for supplemental security income (SSI) payments based on disability under title XVI of the Act. This notice announces the test sites and duration of tests involving use of a single decisionmaker who may make the disability determination without requiring the signature of a medical consultant.

FOR FURTHER INFORMATION CONTACT: Margy LaFond, Models Team Leader, Office of Disability, Disability Process Redesign Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–965–1835.

SUPPLEMENTARY INFORMATION: On April 24, 1995, we published final rules in the Federal Register authorizing us to test different modifications to the disability determination procedures. The tests are designed to provide us with information so that we can determine the effectiveness of the models in improving the disability process. Prior to commencing each test or group of tests, we will publish a notice in the Federal Register describing the models that we will test, where the test sites will be, and the duration of the tests. On or about May 1, 1996, we will begin tests of the single decisionmaker model. Under this model, a single decisionmaker may make disability determinations, without generally requiring a medical consultant to sign the disability determination forms that we use to certify the determination. We plan to test the use of a single decisionmaker in nine sites in seven states. We will select cases for evaluation of these tests for approximately six months, and may continue to have cases processed for another six months. The sites selected represent a mix of geographic areas and case loads. For the purpose of these tests, the single decisionmaker will be an employee of the state agency that makes disability determinations for us. The decisionmaker will make the initial disability determination after any appropriate consultation with a medical consultant. However, before an initial determination is made that a claimant is not disabled in any case which indicates the existence of a mental impairment, the decisionmaker will make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment pursuant to our existing procedures. Similarly, in making a determination with respect to the disability of an individual under age 18 applying for SSI payments based on disability, the decisionmaker will make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child's impairment(s) evaluates the claim. Tests of the single decisionmaker model will be held at the following locations:

- Department of Social Services, Disability Evaluation Division, 1510 E. Herndon, Fresno, CA 93720;
- Department of Social Services, Disability Evaluation Division, 3750 Rosin Court, Suite 120, Sacramento, CA 95834;
- Department of Social Services, Disability Evaluation Division, 4255 Ruffin Road, San Diego, CA 92123;
- Division of Determination Services, Disability Determination Services, 10065 East Harvard Avenue, Suite 207, Denver, CO 80222;
- Bureau of Rehabilitation Services, Disability Determination Services, North Griffin Park, 10 Griffin Road N., Windsor, CT 06095;
- Department of Jobs and Training, Division of Rehabilitation Services, Social Security Disability Determinations Services, Metro Square Building, Suite 300, Seventh and Roberts Streets, St. Paul, MN 55101;
- Nebraska Department of Education, Disability Determination Section, 808 P Street, 4th Floor, Lincoln, NE 68508;
- North Carolina Division of Social Services, Disability Determination Services, 321 Chapanoke Road, Raleigh, NC 27603;
- Department of Social and Health Services, Medical Assistance Administration, Division of Disability Determination Services, Airdustrial Way SW, Building 16, Tumwater, WA 98501; and
- SSA, District Office, 6128 E. 38th Street, Tulsa, OK 74121.

Not all cases received in the test sites listed above will be handled under the test procedures. However, if a claim is selected to be handled by a single decisionmaker as part of the test, the claim will be processed under the procedures established under the final rules cited above.

Dated: April 26, 1996.

Shirley Chater,

Commissioner of Social Security.

[FR Doc. 96–11020 Filed 5–2–96; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Identification of countries that deny adequate protection for intellectual property rights or market access for persons who rely on intellectual property protection.

SUMMARY: The United States Trade Representative (USTR) is directed by section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242), to identify those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries. These identifications must be made within 30 days of the date on which the annual report is submitted to Congressional committees under section 181(b) of the Trade Act. They are presented below.

DATES: This identification took place on April 30, 1996.

ADDRESS: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property, (202) 395–6864, Jo Ellen Urban, Director for Intellectual Property, (202) 395–6864, or Thomas Robertson, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires the USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 1996, having consulted with the appropriate private sector advisory committees, the USTR identified 34 trading partners as failing to provide adequate and effective intellectual property protection and fair and equitable market access to persons who rely on such protection. Of these trading partners, China was identified as a priority foreign country because of its failure to implement the 1995 intellectual property enforcement agreement. Economic damage to U.S. industries continues to rise as a result. Although China has made some progress in halting the retail trade in infringing goods, it has failed to stop illegal CD production, to prevent the export of infringing goods, or to honor its promise to grant market access for legitimate audiovisual products. Because intellectual property enforcement problems in China are already the subject of an action under section 301, a new section 30l investigation will not be initiated. See 19 U.S.C. 2412(b)(2)(A)(ii); 59 FR 35558 (July 12, 1994); 60 FR 1829 (January 5, 1995); 60 FR 7230 (February 7, 1995); 60 FR 12582 (March 7, 1995). China's implementation of the 1995 agreement will remain subject to section 306 monitoring. Trade sanctions for noncompliance could be imposed pursuant to a decision by USTR that China is not satisfactorily implementing the 1995 agreement. 19 U.S.C. 2416.

Eight other trading partners were placed on the administratively-created ''priority watch lists,'' including Argentina, the European Union, Greece, India, Indonesia, Japan, Korea, and Turkey. Greece and Argentina will be subject to review during the course of the year to maintain pressure for further progress. Twenty-five other countries were placed on the special 301 ''watch list,'' including Australia, Bahrain, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, Egypt, EL Salvador, Guatemala, Italy, Kuwait, Oman, Pakistan, Paraguay, Peru, the Philippines, Poland, Romania, the Russian Federation, Saudi Arabia, Singapore, Thailand, the UAE (United Arab Emirates), and Venezuela. The intellectual property protection and market access regimes of EL Salvador, Italy, Paraguay, the Philippines, Russia, Saudi Arabia, and Thailand will be subject to ''out-of-cycle'' reviews. The USTR noted growing concerns about IPR problems in four countries, and highlighted developments and expectations for further progress in 15 other countries. Finally, the USTR announced the impending initiation of WTO dispute settlement cases against Portugal, Pakistan, and India for patent-related violations of the Agreement on Trade-Related Aspects of Intellectual Property Rights and Turkey for violations of the national treatment obligations in the General Agreement on Tariffs and Trade 1994. Separate Federal Register notices will be issued detailing these cases at the appropriate time.

Joseph Papovich,

Deputy Assistant USTR for Intellectual Property.

[FR Doc. 96–11069 Filed 5–2–96; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–103]

Initiation of Section 302 Investigation and Request for Public Comment: Practices of the Government of Portugal Regarding the Term of Patent Protection

AGENCY: Office of the United States Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), with respect to certain acts, policies and practices of the Government of Portugal relating to the term of existing patents. The United States alleges that these acts, policies and practices result in patents owned by U.S. individuals and firms receiving shorter terms than those required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), administered by the World Trade Organization (WTO). USTR invites written comments from the public on the matters being investigates.

DATES: This investigation was initiated on April 30, 1996. Written comments from the public are due on or before noon on Monday, June 3, 1996.

ADDRESSES: Offices of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property, (202) 395–6864, or Thomas Robertson, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as ''section 301'') with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

On April 30, 1996, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should be initiated to determine whether certain laws and regulations or Portugal affecting patent term are actionable under section 301(a). Articles 33 and 65 of the TRIPs Agreement require developed country WTO members to establish by January 1, 1996, a term of protection for patents that runs from the date of grant at least until twenty years after the filing of the application for the patent. Article 70 of the TRIPs Agreement requires this term of protection to be provided to patents existing on January 1, 1996, and those granted thereafter. While Portugal modified its Patent Law to establish a twenty-year-from-application patent term, this term applies only to patents granted after June 1, 1995, and does not apply to patents granted before that time. This failure appears to be inconsistent with the obligations set forth in Article 70 of the TRIPs Agreement.

Investigation and Consultations

As required in section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Portugal regarding the issues under investigation. The request was made pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 64 of the TRIPs Agreement (to the extent that it incorporates by reference Article XXII of the General Agreement on Tariffs and Trade 1994). If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of WTO dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Portugal which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Monday, June 3, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be placed in a file (Docket 301–103) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–103) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–11067 Filed 5–2–96; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–104]

Initiation of Section 302 Investigation and Request for Public Comment: Practices of the Government of Pakistan Regarding Patent Protection for Pharmaceuticals and Agricultural Chemicals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), with respect to certain acts, policies and practices of the Government of Pakistan that may result in the denial of patents and exclusive marketing rights to U.S. individuals and firms involved in the development of innovative pharmaceutical and agricultural chemicals products. The United States alleges that these acts, policies and practices are inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), administered by the World Trade Organization (WTO). USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on April 30, 1996. Written comments from the public are due on or before noon on Monday, June 3, 1996.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property, (202) 395–6864, or Thomas Robertson, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as ''section 301'') with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include *inter alia*, the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

On April 30, 1996, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should

be initiated to determine whether certain laws and regulations of Pakistan affecting the grant of patents and exclusive marketing rights in innovative pharmaceutical and agricultural chemical products are actionable under section 301(a). Article 70 of the TRIPs Agreement requires all countries that do not provide product patent protection for pharmaceuticals and agricultural chemicals on January 1, 1995, to establish by that time a means by which applications for patents for such inventions can be filed, which is commonly referred to as a ''mailbox.'' These applications are to be reviewed when such protection is ultimately provided in accordance with the transitional provisions of the TRIPs Agreement. This provision allows ''mailbox'' applicants to preserve their original filing date for the purposes of novelty and nonobviousness considerations in patentability determinations. Article 70 of the TRIPs Agreement also requires those WTO members delaying the grant of pharmaceutical and agricultural chemical product patent protection to grant ''mailbox'' applicants up to five years of marketing exclusivity if such applicants are granted a patent and marketing approval in another WTO member and marketing approval in the member providing marketing exclusivity. Pakistan has not yet established a ''mailbox'' for the filing of pharmaceutical and agricultural chemical product patent applications, no has it established a system for the grant of exclusive marketing rights. These failures would appear to be inconsistent with the obligations set forth in Article 70 of the TRIPs Agreement.

Investigation and Consultations

As required in section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Pakistan regarding the issues under investigation. The request was made pursuant to Article 4 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 64 of the TRIPs Agreement (to the extent it incorporates by reference Article XXII of the General Agreements on Tariff and Trade 1994). If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of WTO dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Pakistan which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Monday, June 3, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be placed in a file (Docket 301–104) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–104) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–11068 Filed 5–2–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending April 26, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1312.
Date filed: April 25, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Reso 024f—South Africa/Swaziland, Local Currency Fare Changes, Intended effective date: June 1, 1996.

Docket Number: OST–96–1313.
Date filed: April 25, 1996.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso/001—Expedited dated April 9, 1996, Expedited Resos—18th Cargo services Conference (Summary attached.), Intended effective date: July 1, 1996.

Docket Number: OST–96–1314.
Date filed: April 25, 1996.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso/001—NON-Expedited dated April 9, 1996, Finally Adopted Resos—18th CSC (Summary attached.), Intended effective date: October 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–11102 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 26, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1292.
Date filed: April 22, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 20, 1996.
Description: Application of Polar Air Cargo, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, to amend its certificate of public convenience and necessity for

Route 651 to authorize the carrier to engage in scheduled air transportation of property and mail between points in the United States and points in Thailand and to integrate those services to Thailand with other services Polar Air is authorized to provide pursuant to its other exemption and certificate authority, consistent with applicable international agreements. Polar Air also requests an allocation of two weekly U.S. Thailand all-cargo frequencies with which to conduct its proposed operations.

Docket Number: OST–96–1293.

Date filed: April 22, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 20, 1996.

Description: Application of Air Micronesia, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, for an amendment to its certificate of public convenience and necessity for Route 170 authorizing Air Micronesia to provide scheduled cargo service in foreign air transportation between Guam and a point or points in Palau, the Philippines and Thailand. Air Micronesia also seeks the right to combine service at the points on this route with service at other points Air Micronesia is authorized to serve by certificates or exemptions, including the authority sought by Air Micronesia in Docket OST–95–682, consistent with applicable international agreements, and Air Micronesia applies for an allocation of 7 weekly roundtrip U.S. Thailand all-cargo frequencies.

Docket Number: OST–96–1298.

Date filed: April 23, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 21, 1996.

Description: Application of Gemini Air Cargo, LLC, pursuant to 49 U.S.C. Section 41102 and Subpart Q, of the Regulations, request a certificate of public convenience and necessity to enable it to engage in interstate all-cargo scheduled and charter air transportation.

Docket Number: OST–96–1299.

Date filed: April 23, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 21, 1996.

Description: Application of Gemini Air Cargo, LLC, pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, for a certificate of public convenience and necessity to enable it to engage in foreign all-cargo scheduled and charter air transportation.

Docket Number: OST–96–1306.

Date filed: April 24, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 22, 1996.

Description: Application of Alaska Airlines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, requests that the Department of Transportation renew Alaska's certificate of public convenience and necessity authorizing Alaska to engage in the scheduled foreign air transportation of persons, property and mail between Los Angeles, California, on the one hand, and Mazatlan and Puerto Valarta, Mexico, on the other hand; between San Francisco, California, on the one hand, and San Jose del Cabo, Mexico, on the other hand; and between San Diego, California, on the one hand, and San Jose del Cabo, Mexico, on the other hand.

Docket Number: OST–96–1310.

Date filed: April 25, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 23, 1996.

Description: Application of LTU Luftransport-Unternehmen GmbH. & Co., pursuant to 49 U.S.C. Section 41302, applies to add Phoenix, Arizona to its Foreign Air Carrier Permit as a coterminal point for scheduled service between Germany and the United States.

Docket Number: OST–96–1318.

Date filed: April 26, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1996.

Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests a five-year renewal of its Route 645 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Houston and the coterminal points of Barranquilla, Bogota and Cali, Colombia, via the intermediate point of San Jose, Costa Rica, and to combine services on Route 645 with other Continental services authorized by certificate and exemption in compliance with applicable bilateral agreements.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–11101 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Efficiency, Quality and Effectiveness of Existing Civil Rights Programs; Roundtable Discussions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FHWA announces a series of roundtable conferences to obtain information on issues relating to the efficiency, quality, and effectiveness of existing civil rights programs. The agenda for the roundtable discussions includes the topics of state internal and contractor equal employment opportunity (EEO) programs, supportive services, and the administration of specific nondiscrimination statutes. Although the meeting will be open to the public, space will be limited; therefore, the FHWA requests that persons interested in attending the meeting preregister by contacting the ''contact person'' listed below at least three days prior to the meeting. The Disadvantaged Business Enterprise (DBE) Program will not be discusses at these roundtables. The DBE program is currently being addressed by a separate interagency workgroup.

DATES: Public meetings will be held at each of the following locations within the span of one day from 8 a.m. to Noon and from 1 p.m. to 5 p.m. Specific dates and exact locations are as follows:

On May 22, 1996, at Portland State University, Smith Memorial Center, Rooms SMC 294 and SMC 296,724 South West Harrison Street, Portland, Oregon 97201, contact person: Willie Harris, ph. (503) 326–2067.

On June 4, 1996, at Marque Hotel, 111 Perimeter Center West Atlanta, Georgia 30346, contact person: Pamela Foster, ph. (404) 347–4791.

FOR FURTHER INFORMATION CONTACT:

Ms. Linda J. Brown, Chief, Policy and Program Development Division, Office of Civil Rights, Telephone: (202) 366–0471; FAX: (202) 366–1599. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 p.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 30, 1996.

Edward W. Morris, Jr.,

Director, Office of Civil Rights.

[FR Doc. 96–11091 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Docket Number HS–95–14]

Petition for Waiver of Compliance Association of American Railroads

In accordance with title 49 CFR 211.9 and 211.41, notice is hereby given that the Association of American Railroads (AAR), trade association of railroads, has petitioned the Federal Railroad Administration (FRA), on behalf of its members and other interested railroads, for exemption from or waiver of compliance with a requirement of its safety standards. The petition is descried below, including the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis of their request.

All communications concerning these proceedings should identify the appropriate waiver petition docket number (e.g., Waiver Petition Docket Number HS–95–14) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The AAR, acting as a representative for its association members requests a master waiver of compliance with certain provisions of FRA Safety Regulations (Hours of Service of Railroad Employees). The master waiver requested seeks relief from Title 49 Code of Federal Regulations (CFR) Part 228.9(a)(1) for railroads utilizing a computerized system of recording hours of duty data. Part 228.9(a)(1) requires that records maintained under Part 228 be signed by the employee whose time is being recorded, or in the case of train and engine crews, signed by the ranking crew member.

The AAR is proposing that railroads seeking to establish a computerized system of recording hours of duty information apply to FRA for approval under the master waiver. Applications should specify the covered service function (train/engine/yard, dispatcher/operator and/or signal) for which signature relief is requested.

When accessing the computer for input of the hours of duty record, required by Part 228.11, the AAR proposes that a secure password or personal identification number ''pin'' will be utilized and will not appear on the computer screen when the employee enters his or her password or ''pin.'' The password or ''pin'' is proposed to satisfy the signature requirements of Part 228.9(a)(1). The AAR maintains the master waiver will reduce the burden of individual waivers on each railroad seeking similar technological advances to modernize recordkeeping. After adequate testing and compliance verified, a railroad making request for inclusion under the master waiver may be granted relief from the signature provisions of Part 228.9.

FRA's basic criteria for an electronic ''signatureless'' hours of duty recordkeeping system, established under a prior waiver application, is as follows. For purposes of inspection and printing, the electronically displayed record of any proposed computerized hours of duty recordkeeping system should be: (1) Crew based, by train or job symbol, and (2) duty tour oriented. The record should include all covered and commingled service within a duty tour. The system must also meet the following three general requirements.

1. Security. The integrity of the program and data base must be protected by a security system that restricts access to data input and protects against any alteration of the original record after entry. The security system should utilize an employee identification and secure password technique or a comparable method that establishes levels of program access.

2. Audit Trail. The program must include the capability to uniquely identify the inputing individual. Since one record may have more than one inputor, the program must be able to ''split'' the base record into component records that identify data entered by specific individuals. In addition, the program must be accessible through various railroad field locations and remote non-railroad locations. The latter may be accomplished through the use of a modem connection between the railroad and FRA.

3. Program Logic. The program must satisfy the requirements of 49 CFR Part 228.11. The program must address all possible reporting events required in Part 228.11 consistent with FRA's application of the Federal hours of service law.

During the waiver review process, if the railroad wishes to test ''signatureless'' hours of duty recordkeeping, the railroad must maintain a parallel system utilizing signed ''hard copies'' in addition to the electronic data being tested. The railroad should develop an electronic data base sufficient to facilitate a field review by FRA. The railroad may elect to implement electronic recordkeeping along function, division or craft boundaries. Therefore, the data offered for FRA review should include all covered service within the parameters of the requested relief.

Instructional guides, based on covered service functions, are available by direct contact (Dan Norris 202 366–0503) or mailing request to the Federal Railroad Administration, Operating Practice Division—RRS11, 400 Seventh Street, SW., Washington, DC 20590 ATTN: Dan Norris.

Issued in Washington, DC on April 29, 1996.

Phil Olekszyk,

Deputy Association Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–10964 Filed 5–2–96; 8:45 am]

BILLING CODE 4910–06–M

Surface Transportation Board

[Ex Parte No. MC–198 (Sub-No. 1)]

Policy Statement on Motor Contract Requirements Under the Negotiated Rates Act of 1993

AGENCY: Surface Transportation Board (Board),[1] DOT.

ACTION: Termination of Proceeding.

SUMMARY: The Board is terminating this proceeding in which the Interstate Commerce Commission (ICC) had solicited comment on its policy statement explaining and interpreting statutory requirements governing the form and minimum content requirements for transportation agreements executed by motor contract carriers.

DATES: This action is made on May 3, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Martin, (202) 927–6033;

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions and proceedings to the Board.

[TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: In a Policy Statement served February 28, 1994 [10 I.C.C.2d 53], and published at 59 FR 10166 (March 3, 1994), the ICC explained and interpreted statutory requirements governing the form and minimum content requirements for transportation agreements executed by motor contract carriers.[2] The notice provided for public comment.

However, the ICCTA repealed and did not reenact section 6 of the NRA. Because the statutory provision that precipitated the policy statement has been repealed and not reenacted, we are terminating this proceeding pursuant to the provisions of section 204(b)(3) of the ICCTA, [3] and we are vacating the prior policy statement pursuant to the provisions of section 204(a) of that Act.[4]

Authority: 49 U.S.C. 721(a); Sections 204(a) and 204(b)(3) of the ICC Termination Act of 1995, Pub. L. No. 104–88.

Decided: April 17, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11088 Filed 5–2–96; 8:45 am]

BILLING CODE 4915–00–P

[2] Those statutory requirements were adopted in section 6 of the Negotiated Rates Act of 1993 (Pub. L. No. 103–180) (NRA).

[3] Section 204(b)(3) of the ICCTA provides that, ''in the case of a proceeding under a provision of law repeal[ed], and not reenacted, by this Act such proceeding shall be terminated.''

[4] Section 204(a) of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the Interstate Commerce Commission that are based on provisions of law repealed and not substantively reenacted by this Act.''

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday-Saturday, May 16–18, 1996.

LOCATION: Airlie Conference Center, Airlie, Virginia.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: May Board Meeting and Annual Board/Senior Staff Program Review; Approval of Minutes of the Seventy-fifth Meeting of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Approval of Solicited Grants; Selection of 1996–1997 Peace Scholars and Senior Fellows; Selection of 1996 National Essay Contest Winners; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: May 1, 1996.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 96–11178 Filed 5–1–96; 1:19 pm]

BILLING CODE 6820–AR–M

Corrections

Federal Register
Vol. 61, No. 87
Friday, May 3, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96-015-1]

Brucellosis; Approved Brucella Vaccines

Correction

In rule document 96–7837 beginning on page 14237, in the issue of Monday, April 1, 1996, make the following corrections:

§78.1 [Corrected]

1. On page 14239, in the second column, §78.1 (a)(4)(iv) was designated incorrectly and the paragraph should read ''(iii)''.

2. On the same page, in the third column, §78.1 (a)(5)(v) was designated incorrectly and the paragraph should read ''(iv)''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950727194-6005-02; I.D. 062795C]

RIN 0648-AG54

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Consolidation of Regulations Including Recordkeeping and Reporting Requirements

Correction

In rule document 96–2574, beginning on page 5608, in the issue of Tuesday, February 13, 1996, make the following corrections:

1. On page 5637, in Table 3, under Product code, in the H&G with roe 6 column, on the Sablefish (12th) line, ''0.68'' should be blank.

2. On the same page, same table, under same, in the H&G western cut 7 column, on same line, ''0.63'' should read ''0.68.''

3. On same page, same table, under same, in the H&G eastern cut 8 column, on same line, ''0.50'' should read ''0.63.''

4. On same page, same table, under same, in the H&G w/o tail 10 column, on same line, ''.....'' should read ''0.50.''

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[MT96-4-002]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–10032, beginning on page 18132, in the issue of Wednesday, April 24, 1996, in the third column, the docket number should read ''MT96-4-002.''

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention Announces the Following Meeting

Correction

In notice document 96–10601 beginning on page 19075 in the issue of Tuesday, April 30, 1996, make the following correction:

On page 19075, third column, line three of *Status:* ''50 people'' should read ''500 people''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N-0124]

Drug Export; Differin™ (Adapalene) 0.1% Topical Gel

Correction

In notice document 96–9897 appearing on page 17902, in the issue of Tuesday, April 23, 1996, in the third column, the document was printed twice and should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

8 CFR Parts 3 and 242

[EOIR No. 102F; AG Order No. 2020–96]

RIN 1125–AA01

Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings

Correction

In rule document 96–10157 beginning on page 18900 in the issue of Monday, April 29, 1996, make the following corrections:

§3.23 [Corrected]

1. On page 18908, in the first column, in §3.23(b)(3), in the second line, insert ''within 30 days after the date on which the decision for which reconsideration is being sought was rendered'' after ''filed'' and in the third through the sixth lines, delete ''on which the decision for which reconsideration is being sought was rendered''.

§3.31 [Corrected]

2. On the same page, in the third column, in §3.31(b), in the sixth line, ''§3.8(a)(c)'' should read ''§3.8(a) and (c)''.

§242.19 [Corrected]

3. On page 18909, in the third column, in §242.19, in amendatory instruction 24, in the fourth line, ''(6)'' should read ''(b)''.

BILLING CODE 1505–01–D

Federal Register

Friday
May 3, 1996

Part II

Department of Labor

Office of the Secretary

Authority and Responsibilities of the Administrative Review Board; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 2–96]

Authority and Responsibilities of the Administrative Review Board

April 17, 1996.

1. *Purpose.* To establish the Administrative Review Board, delegate authority to it, define its composition, and describe its responsibilities.

2. *Background.* The Secretary of Labor (hereinafter referred to as the ''Secretary'') has been given by statute and regulation the authority and responsibility to decide certain appeals from administrative decisions. This authority and responsibility has been delegated to several entities within the Department of Labor which currently decide the categories of appeals assigned to them by Secretarial Orders. In particular, the Wage Appeals Board and the Board of Service Contract Appeals have both been given authority to decide certain administrative appeals. In addition, the Office of Administrative Appeals has been given the responsibility of advising and assisting the Secretary in the issuance of final agency decisions under a variety of laws. The current fragmented structure for carrying out these responsibilities of the Secretary has created inefficiencies. There have also been delays in the issuance of final agency decisions for which the Office of Administrative Appeals provided advice and assistance. To remedy these problems, the functions of the Wage Appeals Board, the Board of Service Contract Appeals and the Office of Administrative Appeals will be consolidated into the Administrative Review Board. This new Board will be given the authority to issue final agency decisions in cases in which the Office of Administrative Appeals has until now only provided assistance and advice.

3. *Directives Affected.*

a. Secretary's Order 3–90, delegating certain authority and assigning certain responsibilities to the Director of the Office of Administrative Appeals, is hereby canceled.

b. Secretary's Order 1–91, delegating certain authority and assigning certain responsibilities to the Wage Appeals Board, is hereby canceled.

c. Secretary's Order 3–92, delegating certain authority and assigning certain responsibilities to the Board of Service Contract Appeals, is hereby canceled.

4. *Delegation of Authority and Assignment of Responsibility.*

The Administrative Review Board is hereby delegated authority and assigned responsibility to act for the Secretary of Labor in issuing final agency decisions on questions of law and fact arising in review or on appeal of the following matters:

a. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and final decisions of Administrative Law Judges (ALJs), under the following:

(1) The Davis-Bacon Act, as amended (40 U.S.C. 276a– 276a–7); any laws now existing or which may be subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*); the Copeland Act (40 U.S.C. 276c); Reorganization Plan No. 14 of 1950; and 29 C.F.R. Parts 1, 3, 5, 6, Subpart C.

(2) The final decisions include those involving wage determinations, debarment, disputes and the assessment of liquidated damages under the Contract Work Hours and Safety Standards Act (except matters pertaining to safety).

b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of Administrative Law Judges, arising under the McNamara-O'Hara Service Contract Act, as amended (41 U.S.C. 351 *et seq.*); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*)(except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 C.F.R. Parts 4, 5, 6, Subparts B, D, E.

c. Decisions and recommended decisions by ALJs as provided for or pursuant to the following laws and implementing regulations:

(1) Age Discrimination Act of 1975, 42 U.S.C. 6103;

(2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1; 29 C.F.R. Part 31;

(3) Clean Air Act, 42 U.S.C. 7622; 29 C.F.R. Part 24;

(4) Comprehensive Employment and Training Act, 29 U.S.C. 801–999 (Supp. V 1981); 20 C.F.R. Part 676 (1990);

(5) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610; 29 C.F.R. Part 24;

(6) Title IX of the Education Amendments of 1972, 20 U.S.C. 1682;

(7) Employee Polygraph Protection Act of 1988, 29 U.S.C. 2005; 29 C.F.R. Part 801, Subpart E;

(8) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; 29 C.F.R. Part 24;

(9) Equal Access to Justice Act, 5 U.S.C. 504; 29 C.F.R. Part 16;

(10) Executive Order No. 11,246, as amended, 3 C.F.R. 339 (1964–1965 Comp.); reprinted in 42 U.S.C. 2000e app.; 41 C.F.R. Parts 60–1 and 60–30;

(11) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m); 29 C.F.R. Part 531;

(12) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211(d); 29 C.F.R. Part 530, Subpart E;

(13) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c); 29 C.F.R. Part 525;

(14) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 216(e); 29 C.F.R. Part 580;

(15) Federal Unemployment Tax Act, 26 U.S.C. 3303(b)(3), 3304(c);

(16) Federal Unemployment Tax Act (addressing agreements under the Trade Act of 1974, as amended), 26 U.S.C. 3302(c)(3); 20 C.F.R. Part 617;

(17) Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 C.F.R. Part 24;

(18) Immigration and Nationality Act, as amended, 8 U.S.C. 1188; 29 C.F.R. Part 501, Subpart C;

(19) Immigration and Nationality Act, as amended, 8 U.S.C. 1182(n); 29 C.F.R. Part 507, Subpart I; 20 C.F.R. Part 655, Subpart I;

(20) Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 29 C.F.R. Part 504, Subpart E; 20 C.F.R. Part 655, Subpart E;

(21) Immigration and Nationality Act, as amended, 8 U.S.C. 1288(c); 29 C.F.R. Part 506, Subpart G; 20 C.F.R. Part 655, Subpart G;

(22) Immigration Act of 1990, Pub. L. 101–649 as amended, Sec. 221(a); 29 C.F.R. Part 508, Subpart K; 20 C.F.R. Part 655, Subpart K;

(23) Job Training Partnership Act, 29 U.S.C. 1576; 20 C.F.R. Part 627;

(24) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 907(j)(2); 20 C.F.R. Part 702;

(25) Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813, 1853; 29 C.F.R. Part 500, Subpart F;

(26) National Apprenticeship Act, 29 U.S.C. 50; 29 C.F.R. Parts 29 and 30;

(27) Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3803; 29 C.F.R. Part 22;

(28) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; 41 C.F.R. Part 60–741, Subpart B;

(29) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 29 C.F.R. Part 32;

(30) Safe Drinking Water Act, 42 U.S.C. 300j-9(i); 29 C.F.R. Part 24;

(31) Single Audit Act of 1984, 31 U.S.C. 7505; OMB Circular Nos. A–128 and A–110; 29 C.F.R. Part 96;

(32) Social Security Act, 42 U.S.C. 503; 20 C.F.R. Part 601;

(33) Solid Waste Disposal Act, 42 U.S.C. 6971; 29 C.F.R. Part 24;

(34) Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 C.F.R. Part 1978;

(35) Toxic Substances Control Act, 15 U.S.C. 2622; 29 C.F.R. Part 24;

(36) Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4211, 4212; 41 C.F.R. Part 60–250, Subpart B;

(37) Wagner-Peyser Act, as amended, 29 U.S.C. 49 *et seq.*; 20 C.F.R. Part 658;

(38) Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 C.F.R. Part 50–203; and

(39) any laws subsequently enacted, which by statute, law or regulation provide for final decisions by the Secretary of Labor upon appeal or review of decisions or recommended decisions issued by ALJs.

The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations which has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The Board also shall not have jurisdiction to review decisions to deny or grant exemptions, variations, and tolerances and does not have the authority independently to take such actions. In issuing its decisions, the Board shall adhere to the rules of decision and precedent applicable under each of the laws enumerated in Sections 4a., 4b., and 4c. of this Order, until and unless the Board or other authority explicitly reverses such rules of decision or precedent.

5. *Composition.* The Administrative Review Board shall consist of three public members, one of whom shall be designated Chair. The Members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board. The Secretary may also appoint one additional Senior or Alternate Member, who shall perform such duties as are assigned by the Chair. However, the Board shall sit, hear cases, render decisions and perform all other functions only in panels of 3 or fewer Members (whether or not including a Senior or Alternate Member) assigned by the Chair.

6. *Terms of the Members.*

a. Of the initial appointments of Members of the Administrative Review Board made pursuant to this Order, the Member designated Chair shall be appointed for a term not to exceed 2 years, one Member shall be appointed for a term not to exceed 18 months and one Member shall be appointed for a term not to exceed 1 year. Thereafter each member shall be appointed for a term not to exceed 2 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the Member replaced.

b. A Senior or Alternate Member shall be appointed for a term not to exceed 2 years.

c. Appointment of a Member of the Board to a term not to exceed some time period shall not affect the authority of the Secretary to remove, in his or her sole discretion, any Member at any time.

d. A vacancy in the membership of the Board shall not impair the authority of the remaining Member(s) to exercise all the powers and duties of the Administrative Review Board.

7. *Voting.* The Chair of the Board may, in his or her discretion designate himself, herself, or any other Member of the Board to decide any appeal under 29 C.F.R. Parts 7 and 8, provided the interested persons or parties in the appeal have consented to the disposition of the appeal in this manner. The Chair may also direct that any appeal or review may be decided by the full Board (but not to exceed panels of 3 Members). When an appeal is decided by more than one Member, a majority vote shall be necessary for a decision. Any decision in any other matter and the issuance of any procedural rules under section 8 shall also be by a majority vote, except that, where appropriate (see 29 C.F.R. Parts 7 and 8), a case will be heard upon the affirmative vote of one Member.

8. *Location of Board Proceedings.* The Board shall hold its proceedings in Washington, D.C., unless for good cause the Board orders that proceedings in a particular matter be held in another location.

9. *Rules of Practice and Procedure.* The Board shall prescribe such rules of practice and procedure as it deems necessary or appropriate for the conduct of its proceedings. The rules which are prescribed in 29 C.F.R. Part 7 as of the date of this Order shall, until changed, govern the proceedings of the Board when it is deciding appeals described in section 4a. of this Order. The rules which are prescribed in 29 C.F.R. Part 8 as of the date of this Order shall, until changed, govern the proceedings of the Board when it is deciding appeals described in section 4b. of this Order. The rules which applied to appeals and review described in section 4c. of this Order on the day of the issuance of this Order shall remain in effect until they are changed.

10. *Departmental Counsel.* The Solicitor of Labor shall have the responsibility for representing the Secretary, other officials of the Department, and/or the Administrative Review Board, in any administrative or judicial proceedings involving final agency decisions issued pursuant to this Order, including representing officials of the Department before the Administrative Review Board. The Solicitor of Labor shall have the responsibility for providing legal advice and assistance to all officials of the Department of Labor relating to the implementation and administration of this Order and to the Chair of the Board on all administrative matters.

11. *Effective Date.* This delegation of authority and responsibility is effective upon publication in the Federal Register.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–9909 Filed 5–2–96; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Friday
May 3, 1996

Part III

Department of Labor

41 CFR Part 50–203

Employment and Training Administration
20 CFR Part 601, et al.

Employment Standards Administration
20 CFR Part 702

Office of the Secretary
29 CFR Part 1, et al.

Wage and Hour Division
29 CFR Part 504, et al.

Occupational Safety and Health Administration
29 CFR 1978

Office of Federal Contract Compliance Programs
41 CFR Part 60–1, et al.

Establishment of the Administrative Review Board; Final Rule

DEPARTMENT OF LABOR

41 CFR Part 50–203

Employment and Training Administration

20 CFR Parts 601, 617, 626, and 658

Employment Standards Administration

20 CFR Part 702

Office of the Secretary

29 CFR Parts 1, 2, 4, 5, 6, 7, 8, 22, 24, 32, and 96

Wage and Hour Division

29 CFR Parts 504, 507, 508, and 530

Occupational Safety and Health Administration

29 CFR Part 1978

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–30, 60–250, and 60–741

Establishment of the Administrative Review Board

AGENCY: Employment and Training Administration, Employment Standards Administration, Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to provide that the functions performed by the Wage Appeals Board and the Board of Service Contract Appeals will henceforth be performed by the Administrative Review Board. This rule also amends the regulations to provide that when the Administrative Review Board is reviewing administrative decisions which were previously decided by either the Wage Appeals Board or the Board of Service Contract Appeals it will follow the rules of practice and procedure of the Board which would have decided the case prior to the promulgation of this rule. This rule also amends the regulations to provide that the functions previously performed by the Office of Administrative Appeals in advising and assisting the Secretary and other deciding officials of the Department of Labor will henceforth be performed by the Administrative Review Board, which is now designated to issue final agency decisions under a number of laws.

This rule is promulgated to consolidate within one entity the authority delegated by the Secretary to decide administrative appeals and matters under administrative review. This consolidation should result in administrative efficiencies and cost savings.

EFFECTIVE DATE: May 3, 1996.

FOR FURTHER INFORMATION CONTACT: David A. O'Brien, U.S. Department of Labor, Room S–4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219–4728

SUPPLEMENTARY INFORMATION: On April 17, 1996, the Secretary of Labor issued Secretary's Order 2–96 which establishes the Administrative Review Board and transfers to it the authorities and responsibilities previously delegated to the Wage Appeals Board and the Board of Service Contract Appeals. Both the Wage Appeals Board and the Board of Service Contract Appeals are eliminated by Secretary's Order 2–96. In addition to those responsibilities, Secretary's Order 2–96 delegates to the Administrative Review Board the Secretary of Labor's and other deciding officials' authority to issue final agency decisions of administrative appeals and of administrative review cases under certain laws, which are enumerated in the Secretary's Order. Those enumerated laws are those for which the Office of Administrative Appeals was previously assigned the responsibility of advising and assisting the Secretary of Labor and other agency officials in deciding administrative appeals and matters of administrative review. The Office of Administrative Appeals is eliminated by Secretary's Order 2–96.

The rules of practice and procedure for the conduct of an administrative appeal or matter of administrative review brought to the Administrative Review Board shall, until changed, continue to be the rules that are currently prescribed for such an administrative appeal or review.

Executive Order 12866

This rule is not classified as a ''rule'' under Executive Order 12866 on federal regulations, because it is a regulation relating to agency organization, management or personnel. See section 3(d)(3) which exempts this rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act (APA), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as is generally required by the APA (5 U.S.C. 553), since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and nonsubstantive, and merely reflects agency organization, practice and procedure.

Small Business Regulatory Fairness Act of 1996

This rule is not classified as a ''rule'' under Chapter 8 of the Small Business Regulatory Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

List of Subjects

20 CFR Part 601

Labor, Unemployment Compensation, Administrative Practice and Procedure.

20 CFR Part 617

Labor, Unemployment Compensation, Administrative Practice and Procedure.

20 CFR Part 626

Employment, Labor, Manpower training programs.

20 CFR Part 658

Labor, Manpower Training Programs, Administrative Practice and Procedure.

20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, Workers' Compensation.

29 CFR Part 1

Administrative practice and procedure, Government contracts, Labor, Wages.

29 CFR Part 2

Administrative practice and procedure, Government employees.

29 CFR Part 4

Administrative practice and procedure, Government contracts, Labor, Wages, and Reporting and recordkeeping requirements.

29 CFR Part 5

Administrative practice and procedure, Government contracts, Labor, Wages, Reporting and recordkeeping requirements.

29 CFR Part 6

Administrative practice and procedure, Government contracts, Labor, Wages.

29 CFR Part 7

Administrative practice and procedure, Government contracts, Labor, Wages.

29 CFR Part 8

Administrative practice and procedure, Government contracts, Labor, Wages.

29 CFR Parts 22 and 24

Labor, Whistleblowing, Administrative practice and procedure.

29 CFR Part 32

Grant Programs, Civil Rights, Handicapped discrimination.

29 CFR Part 96

Labor, Nonprofit Organizations, Administrative practice and procedure.

29 CFR Part 504

Aliens, Employment, Administrative practice and procedure.

29 CFR Part 507

Aliens, Employment, Administrative practice and procedure.

29 CFR Part 508

Aliens, Employment, Administrative practice and procedure.

29 CFR Part 530

Labor, Homeworkers, Administrative practice and procedure.

29 CFR Part 1978

Labor, Whistleblowing, Administrative practice and procedure.

41 CFR Part 50–203

Administrative practice and procedure, Government contracts, Government procurement, Minimum wages.

41 CFR Part 60–1

Equal Employment Opportunity, Administrative practice and procedure, Civil Rights, Government contracts.

41 CFR Part 60–30

Equal Employment Opportunity, Administrative practice and procedure, Civil Rights, Government contracts.

41 CFR Part 60–250

Equal Employment Opportunity, Administrative Practice and Procedure, Civil Rights, Government Contracts, Individuals With Disabilities, Veterans.

41 CFR Part 60–741

Equal Employment Opportunity, Administrative Practice and Procedure, Civil Rights, Government Contracts, Individuals With Disabilities.

For the reasons set forth in the preamble, 20 CFR Parts 601, 617, 626, 658, and 702; and 29 CFR Parts 1, 2, 4, 5, 6, 7, 8, 22, 24, 32, 96, 504, 507, 508, 530, and 1978; and 41 CFR Parts 50–203, 60–1, 60–30, 60–250, and 60–741 are amended as follows:

TITLE 20

PART 601—ADMINISTRATIVE PROCEDURE

1. The authority citation for 20 CFR Part 601 continues to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. Chapter 23; 29 U.S.C. 49k; 38 U.S.C. Chapters 41 and 42; 39 U.S.C. 3202(a)(1)(E) and 3202 note; 42 U.S.C. 1302; and Secretary of Labor's Order No. 4–75, 40 FR 18515.

2. Section 601.1 is amended by adding paragraph (d) to read as follows:

§ 601.1 General.

* * * * *

(d) As used throughout this Part, the terms ''Secretary'' or ''Secretary of Labor'' shall refer to the Secretary of Labor, U.S. Department of Labor, or his or her designee.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

3. The authority citation for 20 CFR Part 617 continues to read as follows:

Authority: 19 U.S.C. 2320, Secretary's Order No. 3–81, 46 FR 31117.

4. Section 617.3 is amended by revising paragraph (ff) to read as follows:

§ 617.3 Definitions.

* * * * *

(ff) *Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

* * * * *

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

5. The authority citation for 20 CFR Part 626 continues to read as follows:

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; 29 U.S.C. 179i(e).

6. 20 CFR 626.5 is amended, in part, by revising the definition for *Secretary* to read as follows:

§ 626.5 Definitions.

* * * * *

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE JOB SERVICE SYSTEM

7. The authority citation for Part 658 is revised to read as follows:

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 38 U.S.C. chapters 41 and 42; 5 U.S.C. 301 *et seq.*; sections 658.410, 658.411 and 658.413 also issued under 44 U.S.C. 3501 *et seq.*

8. Section 658.710 is amended by revising paragraph (d) to read as follows:

§ 658.710 Decision of the Administrative Law Judge.

* * * * *

(d) If the case involves the decertification of an appeal to the State agency, the decision of the Administrative Law Judge shall contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending by registered mail, return receipt requested, a written appeal to the Administrative Review Board, in care of the Administrative Law Judge who made the decision.

9. Section 658.711 is revised to read as follows:

§ 658.711 Decision of the Administrative Review Board.

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the Administrative Law Judge shall certify the record in the case to the Administrative Review Board, which shall make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board shall be final, shall be in writing, and shall set forth the factual and legal basis for the decision. Notice of the Administrative Review Board's decision shall be published in the Federal Register, and copies shall be made available for public inspection and copying.

PART 702—ADMINISTRATION AND PROCEDURE

10. The authority citation for 20 CFR Part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, 8171 *et seq.*; Reorganization Plan No. 6. of 1950, 15 FR 3174, 3 CFR, 1949–1953, Comp. p. 1004, 64 Stat. 1263; 33 U.S.C. 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1331; Secretary's Order 1–93, 58 FR 21190.

§ 702.433 [Amended]

11. Section 702.433 is amended by substituting the words ''Administrative Review Board,'' for ''Assistant Secretary for Employment Standards'' wherever they appear in paragraphs (e) and (f).

§ 702.434 [Amended]

12. Section 702.434 is amended by substituting the words ''Administrative Review Board,'' for ''Assistant Secretary for Employment Standards'' wherever they appear in paragraphs (a), (b), or (c).

TITLE 29

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

13. The authority citation for 29 CFR Part 1 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in appendix A of this part.

§§ 1.1, 1.6, 1.9 [Amended]

14. In 29 CFR Part 1 remove the words ''Wage Appeals Board'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 1.1(a);

(b) Section 1.6(e)(2);

(c) Section 1.9 in the section heading and in the text *in two places.*

PART 2—GENERAL REGULATIONS

15. The authority citation for 29 CFR Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 552–556; Section 2.3 also issued under 31 U.S.C. 952.

16. Subpart A of Part 2 is amended by adding § 2.8 to read as follows:

§ 2.8 Final agency decisions.

Final agency decision issued under the statutory authority of the U.S. Department of Labor may be issued by the Secretary of Labor, or by his or her designee under a written delegation of authority. The Administrative Review Board, an organizational entity within the Office of the Secretary, has been delegated authority to issue final agency decisions under the statutes, executive orders, and regulations as provided in Secretary's Order 2–96, published on May 3, 1996.

§ 2.12 [Amended]

17. In 29 CFR Part 2 remove the words ''Wage Appeals Board'' and add, in their place, the words ''Administrative Review Board'' in the following place:

(a) Section 2.12(d).

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

18. The authority citation for 29 CFR Part 4 continues to read as follows:

Authority: 42 U.S.C. 351 *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

§§ 4.1, 4.6, 4.11, 4.12, 4.55, 4.163, 4.187 [Amended]

19. In 29 CFR Part 4 remove the words ''Board of Service Contract Appeals'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 4.1b(a), *in two places;*

(b) Section 4.6(d)(2);

(c) Section 4.11(e), *in two places;*

(d) Section 4.12(d)(4)(iii);

(e) Section 4.12(f), *in two places;*

(f) Section 4.55(b), *in two places;*

(g) Section 4.163(c), *in two places;* and

(h) Section 4.187(a).

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

20. The authority citation for 29 CFR Part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

§§ 5.8, 5.11, 5.12 [Amended]

21. In 29 CFR Part 5 remove the words ''Wage Appeals Board'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 5.8(c);

(b) Section 5.11(c)(3);

(c) Section 5.11(d);

(d) Section 5.12(c);

(e) Section 5.12(d)(2)(iv)(C); and

(f) Section 5.12(d)(5), *in two places.*

§ 5.8 [Amended]

22. In 29 CFR Part 5 remove the words ''Board of Service Contract Appeals'' and add, in their place, the words ''Administrative Review Board'' in the following place:

(a) Section 5.8(c).

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE CONTRACTS

23. The authority citation for 29 CFR Part 6 continues to read as follows:

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a–276a–7; 76 Stat. 357–359, 40 U.S.C. 327–332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

§§ 6.18, 6.19, 6.20, 6.21, 6.56, 6.57 [Amended]

24. In 29 CFR Part 6 remove the words ''Board of Service Contract Appeals'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 6.18(b)(3);

(b) Section 6.19(b)(1);

(c) Section 6.20, *in two places;*

(d) Section 6.21 (a) and (b);

(e) Section 6.56; and

(f) Section 6.57.

§§ 6.32, 6.33, 6.34, 6.35 [Amended]

25. In 29 CFR Part 6 remove the words ''Wage Appeals Board'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 6.32(b)(4);

(b) Section 6.33(b)(1);

(c) Section 6.34, *in two places;* and

(d) Section 6.35, *in two places.*

§§ 6.8, 6.43, 6.44, 6.46 [Amended]

26. In 29 CFR Part 6 remove the words ''Board of Service Contract Appeals or Wage Appeals Board'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 6.8;

(b) Section 6.43(b)(3);

(c) Section 6.44(b); and

(d) Section 6.46.

§ 6.45 [Amended]

27. In 29 CFR Part 6 remove the words ''Board of Service Contract Appeals'' and ''Wage Appeals Board'' and add, in their place, the words ''Administrative Review Board'' in the following place:

(a) Section 6.45.

PART 7—PRACTICE BEFORE WAGE APPEALS BOARD

28. The authority citation for 29 CFR Part 7 continues to read as follows:

Authority: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301, 3 CFR, 1949–1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755.

29. The part heading for 29 CFR Part 7 is revised to read as follows:

PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

§§ 7.1, 7.3, 7.5, 7.7, 7.8, 7.15, 7.16 [Amended]

30. In 29 CFR Part 7 remove the words ''Wage Appeals Board'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 7.1(a); and
(b) Section 7.3;
(c) Section 7.5(a)(2);
(d) Section 7.7;
(e) Section 7.8 in the section heading;
(f) Section 7.15(a); and
(g) Section 7.16(a).

§ 7.16 [Amended]

31. In 29 CFR Part 7 remove the words ''Executive Secretary'' and add, in their place, the words ''Executive Director'' in the following place:

(a) Section 7.16(a).

32. Section 7.1 is amended by revising paragraph (a) to read as follows:

§ 7.1 Purpose and scope.

(a) This part contains the rules of practice of the Administrative Review Board when it is exercising its jurisdiction described in paragraph (b) of this section.

* * * * *

PART 8—PRACTICE BEFORE THE BOARD OF SERVICE CONTRACT APPEALS

33. The authority citation for 29 CFR Part 8 continues to read as follows:

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357–359, 40 U.S.C. 327–332.

34. The part heading for 29 CFR Part 8 is revised to read as follows:

PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS

§§ 8.1, 8.4, 8.6, 8.9, 8.10, 8.18 [Amended]

35. In 29 CFR Part 8 remove the words ''Board of Service Contract Appeals'' and add, in their place, the words ''Administrative Review Board'' in the following places:

(a) Section 8.1(a);
(b) Section 8.4(a)(2);
(c) Section 8.6 in the section heading;
(d) Section 8.9 in the section heading;
(e) Section 8.10(a); and
(f) Section 8.18.

§ 8.10 [Amended]

36. In 29 CFR Part 8 remove the words ''Executive Secretary'' and add, in their place, the words ''Executive Director'' in the following place:

(a) Section 8.10 (a).

§ 8.0 [Removed]

37. Section 8.0 is removed.

38. Section 8.1 is amended by revising paragraph (a) to read as follows:

§ 8.1 Purpose and scope.

(a) This part contains the rules of practice of the Administrative Review Board when it is exercising its jurisdiction described in paragraph (b) of this section.

* * * * *

PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

39. The authority citation for 29 CFR Part 22 continues to read as follows:

Authority: Pub. L. 99–509, §§ 6101–6104, 100 Stat. 1874, 31 U.S.C. 3801–3812.

40. Section 22.2 is amended by revising paragraph(c) to read as follows:

§ 22.2 Definitions.

* * * * *

(c) *Authority head* means the Secretary of Labor or his or her designee.

* * * * *

PART 24—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES

41. The authority citation for 29 CFR Part 24 is revised to read as follows:

Authority: 42 U.S.C. 300j–9(i); 33 U.S.C. 1367; 15 U.S.C. 2622; 42 U.S.C. 6971; 42 U.S.C. 7622; 42 U.S.C. 5851; 42 U.S.C. 9610.

42. Section 24.1 is amended by revising paragraph (a) and by adding paragraph (c) to read as follows:

§ 24.1 Purpose and scope.

(a) This part implements the several employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following federal statutes: Safe Drinking Water Act, 42 U.S.C. 300j–9(i); Federal Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

* * * * *

(c) Throughout this part, ''Secretary'' or ''Secretary of Labor'' shall mean the Secretary of Labor, U.S. Department of Labor, or his or her designee.

PART 32—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—General Provisions

43. The authority for 29 CFR Part 32 continues to read as follows:

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); secs. 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; Executive Order 11914; 41 FR 17871.

44. Section 32.3 is amended by revising the term for *Secretary* to read as follows:

§ 32.3 Definitions.

As used in this part, the term:

* * * * *

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

* * * * *

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

45. The authority citation for 29 CFR Part 96 continues to read:

Authority: 31 U.S.C. 7500 *et seq.*; OMB Circular No. A–128; OMB Circular No. A–110; and OMB Circular No. A–133.

46. Section 96.603 is amended by revising paragraphs (b)(4) and (b)(5) to read as follows:

§ 96.603 Grants.

* * * * *

(b) * * *

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final agency action by the Secretary of Labor, unless within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Administrative Review Board, United States Department of Labor, specifically identifying the procedures or finding of fact, law, or policy with which the exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary of Labor, unless the Administrative Review Board, United States Department of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Administrative Review Board, United States Department of Labor.* Any case accepted for review by the Administrative Review Board, United States Department of Labor, shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 504— ATTESTATIONS BY FACILITIES USING NONIMMIGRANT ALIENS AS REGISTERED NURSES

47. The authority citation for 29 CFR Part 504 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m) and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103; and sec. 341 (a) and (b), Pub. L. 103–182, 107 Stat. 2057.

§ 504.445 [Amended]

48. In 29 CFR Part 504 remove the words ''Office of Administrative Appeals, room S–4309'' and add, in their place, the words ''Administrative Review Board'' in the following place:

(a) Section 504.445(f).

PART 507— ENFORCEMENT OF H–1B LABOR CONDITION APPLICATIONS

49. The authority citation for 29 CFR Part 507 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*; Pub. L. 102–232, 105 stat. 1733, 1748(8 U.S.C. 1182 note); and sec. 341 (a) and (b), Pub. L. 103–182, 107 Stat. 2057.

§ 507.845 [Amended]

50. In 29 CFR Part 507 remove the words ''Office of Administrative Appeals, room S–4309'' and add, in their place, the words ''Administrative Review Board'' in the following place:

(a) Section 507.845(f).

PART 508—ATTESTATIONS FILED BY EMPLOYERS UTILIZING F–1 STUDENTS FOR OFF-CAMPUS WORK

Subpart K—Enforcement of the Attestation Process for Attestations Filed by Employers Utilizing F–1 Students in Off-campus Work

51. The authority citation for 29 CFR Part 508 continues to read as follows:

Authority: 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 508.1045 [Amended]

52. In 29 CFR Part 508 remove the words ''Office of Administrative Appeals, room S–4309'' and add, in their place, the words ''Administrative Review Board'' in the following place:

(a) Section 508.1045(f).

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

Subpart A—Definitions

53. The authority citation for 29 CFR Part 530 continues to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 85–01, June 5, 1985.

54. Section 530.1 is amended by adding paragraph (l) to read as follows:

§ 530.1 Definitions.

* * * * *

(l) As used throughout this part the terms ''Secretary'' or ''Secretary of Labor'' shall mean the Secretary of Labor, U.S. Department of Labor, or his or her designee.

PART 1978—RULES FOR IMPLEMENTING 49 U.S.C. 31105, THE WHISTLEBLOWER PROVISION OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA)

Subpart B—Rules of Procedure

55. The authority citation for 29 CFR Part 1978 is revised to read as follows:

Authority: 29 U.S.C. 657(g)(2); 29 U.S.C. 660(c)(2); 49 U.S.C. 31101 and 31105; Secretary of Labor's Order No. 1–90, 55 FR 9033.

56. Section 1978.109 is amended by revising paragraphs (c) (1), (2), (4) and (5) to read as follows:

§ 1978.109 Decision and orders.

* * * * *

(c) *Final order.* (1) Within 120 days after issuance of the administrative law judge's decision and order, the Administrative Review Board, United States Department of Labor, shall issue a final decision and order based on the record and the decision and order of the administrative law judge.

(2) The parties may file with the Administrative Review Board, United States Department of Labor, briefs in support of or in opposition to the administrative law judge's decision and order within thirty days of the issuance of that decision unless the Administrative Review Board, United States Department of Labor, upon notice to the parties, establishes a different briefing schedule.

* * * * *

(4) Where the Administrative Review Board, United States Department of Labor, determines that the named party has not violated the law, the final order shall deny the complaint.

(5) The final decision and order of the Administrative Review Board, United States Department of Labor, shall be served upon all parties to the proceeding.

57. Section 1978.110 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1978.110 Judicial review.

* * * * *

(b) A final order of the Administrative Review Board, United States Department of Labor, shall not be subject to judicial review in any criminal or other civil proceedings (49 U.S.C. 2305(d)(2)).

(c) The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Administrative Review Board, United States Department of Labor, to the appropriate court pursuant to the rules of such court.

58. Section 1978.111 is amended by revising paragraphs (c) and (d) (2) and (3) to read as follows:

§ 1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement

* * * * *

(c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion

of the findings or preliminary order with respect to which the objection was withdrawn.

* * * * *

(d) * * *

(2) *Adjudicatory settlement.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board, United States Department of Labor, or the ALJ. A copy of the settlement shall be filed with the ALJ or the Administrative Review Board, United States Department of Labor as the case may be.

(3) If, under paragraph (d) (1) or (2) of this section the named person makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party as set forth in § 1978.107(a). In such circumstances, the Assistant Secretary shall immediately notify the complainant that his review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Secretary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary shall immediately notify all parties of his or her decision in writing and, if the case is before the administrative law judge, or the Administrative Review Board, United States Department of Labor on review, a copy of the notice shall be sent to the appropriate official. Upon receipt of the Assistant Secretary's notice, the parties shall assume the roles set forth in § 1978.107(b).

TITLE 41

PART 50–203—RULES OF PRACTICE

Subpart A—Proceedings Under Section 5 of the Walsh-Healey Public Contracts Act

59. The authority for 41 CFR Part 50–203 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38.

60. § 50–203.1 is amended by revising paragraph (b) to read as follows:

§ 50–203.1 Reports of breach or violation.

* * * * *

(b) A report of breach or violation may be reported to the nearest office of the Wage and Hour Division, Employment Standards Administration or with the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210.

* * * * *

§ 50–203.1 [Amended]

61. In § 50–203.1(d) remove the words ''a Regional Director of the Wage and Hour Public Contracts Divisions'' and add, in their place, ''the Wage and Hour Division''.

§ 50–203.2 [Amended]

62. In § 50–203.2 remove the word ''Deputy''.

§§ 50–203.3; 50–203.8 [Amended]

63. In 41 CFR Part 50–203 remove the words ''the Examiner'' and add, in their place, the words ''the administrative law judge'' in the following places:

(a) Section 50–203.3(a); and

(b) Section 50–203.8(j).

§ 50–203.6 [Amended]

64. Section 50–203.6(b) is amended by removing the following language from its first sentence: ''(or the Administrator holding the hearing as provided in § 50–203(m))''.

§ 50–203.11 [Amended]

65. In § 50–203.11(a) remove the words ''Admininstrator of Workplace Standards'' and add, in their place, the words ''Administrative Review Board''.

66. In § 50–203.11 remove the word ''Administrator'' and add, in its place, the words ''Administrative Review Board'' in the following places:

(a) Section 50–203.11(d), *in three places;* and

(b) Section 50–203.11(e).

67. Section 50–203.11 is amended by revising paragraph (f), and by removing paragraphs (g) and (h) to read as follows:

§ 50–203.11 Review.

* * * * *

(f) If the respondent is found to have violated the Act, the Administrative Review Board shall determine whether respondent shall be relieved from the application of the ineligible list provisions of section 3 of the Walsh-Healey Public Contracts Act (sec. 4, 49 Stat. 2039; 41 U.S.C. 37).

§§ 50–203.2–50.203.11 [Amended]

68. In 41 CFR Part 50–203 remove the words ''Trial Examiner'' and add, in their place, the words ''administrative law judge'' in the following places:

(a) Section 50–203.2, *in two places;*

(b) Section 50–203.3(d);

(c) Section 50–203.3(e);

(d) Section 50–203.4(a);

(e) Section 50–203.4(b);

(f) Section 50–203.5, *in four places;*

(g) Section 50–203.6(a);

(h) Section 50–203.6(b);

(i) Section 50–203.6(c);

(j) Section 50–203.7(a);

(k) Section 50–203.7(b);

(l) Section 50–203.8(b);

(m) Section 50–203.8(d);

(n) Section 50–203.8(e), *in two places;*

(o) Section 50–203.8(h);

(p) Section 50–203.8(j);

(q) Section 50–203.8(k), *in two places;*

(r) Section 50–203.8(l), *in two places;*

(s) Section 50–203.9(a), *in two places;*

(t) Section 50–203.10, *in the heading;*

(u) Section 50–203.10(a), *in three places;*

(v) Section 50–203.10(b), *in two places;*

(w) Section 50–203.11(a), *in two places;*

(x) Section 50–203.11(d), *in two places;* and

§ 50–203.11 [Amended]

68a. In 41 CFR Part 50–203 remove the words ''Trial Examiner's'' and add, in their place, the words ''administrative law judge's'' in the following places:

(a) Section 50–203.11(b);

(b) Section 50–203.11(e);

§ 50–203.8 [Amended]

69. In 41 CFR Part 50–203 remove the words ''Trial Examiners'' and add, in their place, the words ''administrative law judges'' in the following places:

(a) Section 50–203.8(b);

(b) Section 50–203.8(c);

70. In 41 CFR Part 50–203 remove the word ''examiners'' and add, in its place, the words ''administrative law judges'' in the following places:

(a) Section 50–203.8(b);

(b) Section 50–203.8(c);

71. Section 50–203.8 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 50–203.8 Hearing.

(a) The hearing for the purpose of taking evidence upon a formal complaint shall be conducted by an administrative law judge. * * *

§ 50–203.8 [Amended]

72. Section 50–203.8 is amended by removing paragraph (m).

§ 50–203.10 [Amended]

73. In § 50–203.10(a) remove the words ''Secretary of Labor'' and add, in their place, ''Administrative Review Board''.

§ 50–203.11 [Amended]

74. In § 50–203.11(a) remove the words ''Administrator of Workplace Standards'' and add, in their place, ''Administrative Review Board''.

75. Section 50–203.12 is revised to read as follows:

§ 50–203.12 Effective date.

The amendments to Subpart A shall become effective upon publication in the Federal Register May 3, 1996; Provided, however, That in any case where a hearing has begun or has been completed prior to said publication, the proceeding shall be conducted pursuant to the rules of practice in effect at the time the proceeding was initiated unless the parties stipulate in writing or orally for the record that the proceeding be conducted in accordance with §§ 50–203.1 to 50–203.12.

§§ 50–203.17, 50–203.18, 50–203.20 [Amended]

76. In Part 50–203 remove the words ''Presiding Officer'' and add, in their place, the words ''administrative law judge'' in the following places:

(a) Section 50–203.17(d);

(b) Section 50–203.18(a);

(c) Section 50–203.18(c), *in two places;*

(d) Section 50–203.18(d); and

(e) Section 50–203.20, *in two places;*

§§ 50–203.18, 50–203.21 [Amended]

77. In Part 50–203 remove the word ''Secretary'' and add, in its place, the words ''Administrative Review Board'' in the following places:

(a) Section 50–203.18(d), *in two places;*

(b) Section 50–203.21(b) introductory text; and

(c) Section 50–203.21(d);

78. Section 50–203.17 is amended by revising paragraph (a) to read as follows:

§ 50–203.17 Hearings.

(a) Hearings held for the purpose of receiving evidence with regard to prevailing minimum wages in the various industries shall be conducted by an administrative law judge.

* * * * *

§ 50–203.19 [Amended]

79. In § 50–203.19 remove the words ''Secretary or the Hearing Examiner'' and add, in their place, ''administrative law judge''.

80. Section 50–203.21 is amended by revising paragraph (a) to read as follows:

§ 50–203.21 Decisions.

(a) Within 30 days after the close of the hearing, each interested person at the hearing may file with the administrative law judge an original and four copies of a statement containing proposed findings of fact and conclusions of law, together with reasons for such proposals. The administrative law judge shall, immediately following the termination of the thirty-day period provided for the filing of proposed findings and conclusions, certify the complete record to the Administrative Review Board.

* * * * *

§ 50–203.23 [Removed]

81. Section 50–203.23 is removed.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

82. The authority citation for 41 CFR Part 60–1 continues to read as follows:

Authority: Sec 201, E.O. 11246 (30 FR 12319), as amended by E.O. 12086.

83. Part 60–1.3 of Subpart A is amended by revising the definition for ''Secretary'' to read as follows:

§ 60–1.3 Definitions.

* * * * *

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

* * * * *

84. Part 60–1.26 of Subpart B is amended by revising paragraph (d) to read as follows:

§ 60–1.26 Enforcement proceedings.

* * * * *

(d) *Decision following administrative proceeding.* If it is determined after a hearing (or after the contractor waives a hearing) that the contractor is violating the order or the regulations issued thereunder, the Administrative Review Board, United States Department of Labor, (in accordance with 41 CFR 60–30.30) shall issue an Administrative order enjoining the violations and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative order shall result in the imposition of the sanctions contained in section 209 (a)(5) or (a)(6) of the Executive Order.

* * * * *

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

85. The authority citation for 41 CFR Part 60–30 is revised to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

86. Section 60–30.27 is revised to read as follows:

§ 60–30.27 Recommended decision.

Within a reasonable time after the filing of briefs, the Administrative Law Judge shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended findings, conclusions, and decision shall be served on all parties and amici to the proceeding.

87. Section 60–30.28 is revised to read as follows:

§ 60–30.28 Exceptions to recommended decisions.

Within 14 days after receipt of the recommended findings, conclusions, and decision, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 14 days of their receipt by said parties. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Service of such briefs or exceptions and responses shall be made simultaneously on all parties to the proceeding. Requests to the Administrative Review Board, United States Department of Labor, for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

88. Section 60–30.29 is revised to read as follows:

§ 60–30.29 Record.

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a final decision, which shall be the final Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

89. Section 60–30.30 is revised to read as follows:

§ 60–30.30 Final Administrative Order.

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a final Administrative order which shall be served on all parties. If the Administrative Review Board, United States Department of Labor,

concludes that the defendant has violated the Executive Order, the equal opportunity clause, or the regulations, an Administrative order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative order shall result in the immediate cancellation, termination and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

90. Section 60–30.35 is revised to read as follows:

§ 60–30.35 Recommended decision after hearing.

Within 15 days after the hearing is concluded, the Administrative Law Judge shall recommend findings, conclusions, and a decision. The Administrative Law Judge may permit the parties to file written post-hearing briefs within this time period, but the Administrative Law Judge's recommendations shall not be delayed pending receipt of such briefs. These recommendations shall be certified, together with the record, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended decision shall be served on all parties and amici to the proceeding.

91. Section 60–30.36 is revised to read as follows:

§ 60–30.36 Exceptions to recommendations.

Within 10 days after receipt of the recommended findings, conclusions and decision, any party may submit exceptions to said recommendations. Exceptions may be responded to by other parties within 7 days after receipt by said parties of the exceptions. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Briefs or exceptions and responses shall be served simultaneously on all parties to the proceeding.

92. Section 60–30.37 is revised to read as follows:

§ 60–30.37 Final Administrative order.

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue a final Administrative order which shall be served on all parties. Unless the Administrative Review Board, United States Department of Labor, issues a final Administrative order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60–30.30 shall be applicable to this subsection.

PART 60–250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

93. The authority citation for 41 CFR Part 60–250 continues to read as follows:

Authority: 38 U.S.C. 4211 and 4212; 29 U.S.C. 793; Executive Order 11758 (39 FR 2075, January 15, 1974; 3 CFR 1971–1975 Comp. p. 841).

§ 60–250.29 [Amended]

94. Part 60–250 in Subpart B is amended by removing paragraph (b)(3) in § 60–250.29.

PART 60–741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

95. The authority citation for 41 CFR Part 60–741 continues to read as follows:

Authority: Sec. 503, Pub. L. 93–1112, 87 Stat. 393 (20 U.S.C. 793), as amended by sec. 111, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706) and E.O. 11758.

§ 60–741.29 [Amended]

96. Part 60–741 in Subpart B is amended by removing paragraph (b)(3) in § 60–741.29.

Signed at Washington, D.C. this 17th day of April 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–9910 Filed 5–2–96; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Friday
May 3, 1996

Part IV

Department of Health and Human Services

Health Care and Financing Administration

Medicare Program; Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–846–PN]

RIN 0938–AH38

Medicare Program; Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice discusses changes to work relative value units (RVUs) affecting payment for physician services. Section 1848(c)(2)(B)(i) of the Social Security Act requires that we review all work RVUs no less often than every 5 years. Since we implemented the physician fee schedule effective for services furnished beginning January 1, 1992, we have initiated the 5-year review of work RVUs that will be effective for services furnished beginning January 1, 1997.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 2, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–846–PN, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–846–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

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FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 786–1309.

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this proposed notice, we are providing the following table of contents.

Table of Contents

In addition, because of the many organizations and terms to which we refer by acronym in this proposed notice, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA American Medical Association

CPT [Physicians'] Current Procedural Terminology [4th Edition, 1996, copyrighted by the American Medical Association]

HCFA Health Care Financing Administration

HCPCS HCFA Common Procedure Coding System

IWPUT Intraservice work per unit time

RUC [American Medical Association Specialty Society] Relative [Value] Update Committee

RVU Relative value unit

I. Background

A. Legislative Requirements

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). Since January 1, 1992, Medicare pays for physician services under section 1848 of the Act, ''Payment for Physicians' Services.'' This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a Medicare volume performance standard for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to preserve budget neutrality.

B. Published Changes to the Physician Fee Schedule

We published a final rule on November 25, 1991 (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physician services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA's) Physicians' Current Procedural Terminology (CPT) through an ''interim RVU'' process every year. The updates to the RVUs and fee schedule policies follow:

- September 15, 1992, as a correction notice for the 1992 physician fee schedule (57 FR 42491).
- November 25, 1992, as a final notice with comment period on new and revised RVUs only for the 1993 physician fee schedule (57 FR 55914).
- June 7, 1993, as a correction notice for the 1993 physician fee schedule (58 FR 31964).
- December 2, 1993, as a final rule with comment period (58 FR 63626) announcing revised payment policies and RVUs for 1994. (We solicited comments on new and revised RVUs only. There were two correction notices published for the 1994 physician fee schedule (July 15, 1994, 59 FR 36069) and (August 4, 1994, 59 FR 39828).)
- December 8, 1994, as a final rule with comment period (59 FR 63410) to revise the geographic adjustment factor values, fee schedule payment areas, and payment policies and RVUs for 1995. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act. (There were two correction notices published for the 1995 physician fee schedule (January 3, 1995, 60 FR 46) and (July 18, 1995, 60 FR 36733).)
- December 8, 1995, as a final rule with comment period (60 FR 63124) to revise various policies affecting payment for physician services including Medicare payment for physician services in teaching settings, the RVUs for certain existing procedure codes, and to establish interim RVUs for new and revised procedure codes. The rule also included the final revised 1996 geographic practice cost indices.

This proposed notice updates information in the final Federal Register documents listed above. It discusses changes to work RVUs affecting payment for physician services. Section 1848(c)(2)(B)(i) of the Act requires that we review all work RVUs no less often than every 5 years. Since we implemented the physician fee schedule effective for services furnished beginning January 1, 1992, we have initiated the 5-year review of work RVUs that will be effective for services furnished beginning January 1, 1997.

C. Summary of the Development of Physician Work Relative Value Units

Development of the concepts and methodology underlying the physician fee schedule has been under way for a number of years. Based on Congressional mandates contained in the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), and the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), we began our effort to develop a physician fee schedule based on a relative value scale. We were assisted in this task by a number of experts inside and outside of government, including the research team at the Harvard University School of Public Health. The Harvard research team produced ''A National Study of Resource-Based Relative Value Scales for Physician Services'' (September 1988) and ''A National Study of Resource-Based Relative Value Scales for Physician Services Phase II'' (November 1990) under a cooperative agreement with us. Harvard's Phase III final report was completed in December of 1991.

A model fee schedule was published on September 4, 1990 as part of a notice with comment period (55 FR 36178). The addenda to the model fee schedule notice provided preliminary estimates of the RVUs associated with the approximately 1,400 services studied as part of the Harvard Phase I study. We provided a 60-day public comment period; comments received were considered carefully and were helpful to us in developing the proposed rule that was published in the Federal Register on June 5, 1991 (56 FR 25792).

Based primarily on Phase II and some of Phase III of the Harvard study, the proposed rule contained RVUs for more than 4,000 services representing about 85 percent of Medicare payments. In Phase II, 15 additional medical and surgical specialties were studied that were not studied in Phase I. In addition, seven Phase I specialties were restudied, with four of these restudies funded by the specialty societies. Not only did Phase II almost triple the number of services for which RVUs had been produced, but it refined the RVUs for many of the original 1,400 services.

The final rule published on November 25, 1991 (56 FR 59502) was based primarily on Phases II and III of the Harvard study, which produced RVUs for all but about 400 of the remaining Medicare-covered services that required work RVUs. In Phase III, most of the extrapolated Phases I and II RVUs were replaced by RVUs that were generated by a small group survey process, and many preservice and postservice work estimates for Phases I and II work RVUs were revised. A few early Phase III results were available for inclusion in the proposed rule; additional Phase III results were provided to us in installments throughout 1991. We developed RVUs for roughly 400 services that had not been surveyed by Harvard (generally low volume services or nonphysician services or services that were extrapolated by Harvard). Physician work RVUs were reviewed and developed by carrier medical directors, initially through a survey conducted by mail and subsequently through group meetings to refine the product of the survey process. Through a consensus or Delphi-type process, carrier medical directors rated physician work for the remaining services. In addition, a number of physician work RVUs were refined based on information provided as part of the

comment process on the June 5, 1991 proposed rule.

The AMA Specialty Society Relative Value Update Committee (RUC) was formed in November 1991 and grew out of a series of discussions between the AMA and the major national medical specialty societies. The RUC is comprised of 26 members; 22 are representatives of major specialty societies. The remaining members represent the AMA, the American Osteopathic Association, and the CPT Editorial Panel. The work of the RUC is supported by the RUC Advisory Committee made up of representatives of 65 specialty societies in the AMA's House of Delegates.

The RUC currently makes recommendations to us on the assignment of RVUs for new and revised CPT codes. As we discussed in our December 8, 1994 final rule with comment period, we shared comments we received on the 1995 work RVUs with the RUC (59 FR 63453). However, we retained the responsibility for analyzing the comments and developing this proposed notice.

D. Scope of the Review

We initiated the 5-year review by soliciting public comments on all work RVUs for approximately 7,000 CPT/HCPCS (HCFA Common Procedure Coding System) codes published in our December 8, 1994 final rule (59 FR 63410). We reviewed all timely comments received during the comment period for our December 8, 1994 final rule. We excluded two major areas of comments from the 5-year review. The first excluded area was comments that addressed work RVUs that were considered interim for 1995. We considered these comments as a part of our annual review process, the results of which we published in the December 8, 1995 final rule (60 FR 63124). The second major area we excluded was comments that addressed practice expense and malpractice expense RVUs. As we stated in the December 8, 1994 final rule (59 FR 63454), the scope of the 5-year review is limited to work RVUs.

Three specialty societies (the American Academy of Orthopaedic Surgeons, the American Society of Anesthesiologists, and the American Academy of Otolaryngology - Head and Neck Surgery, Inc.) submitted studies conducted for them by Abt Associates, Inc., which spanned all of the more than 2,000 codes used by physicians in those specialties. We referred these studies to the RUC. The American Academy of Pediatrics submitted comments asserting that the physician work involved in furnishing 480 services to pediatric patients is different than the physician work involved in furnishing the same services to adult patients.

After a preliminary screening, we referred approximately 3,500 codes to the RUC for its review. The codes included those found in public comments (700 codes), the American Academy of Pediatrics— comments (480 codes); three special studies by Abt Associates, Inc. (about 2,000 codes); and those we identified as potentially misvalued (300 codes).

II. Discussion of Comments and Decisions

A. Review of Comments

During the comment period for our December 8, 1994 final rule (59 FR 63410), we received more than 500 public comments on approximately 1,100 codes. After review by our medical staff, we forwarded comments on approximately 700 codes for consideration by the RUC. Comments that we did not forward are listed in Table 1 and are identified by a code that explains our rejection of the comment. In addition, we forwarded comments on approximately 300 codes identified by us as potentially misvalued.

Comments that we did not refer to the RUC generally fall into several categories:

- Comments that do not pertain to work RVUs or that are not sufficiently descriptive to be helpful in understanding why the existing RVUs are incorrect.
- Comments on services for which we have not assigned work RVUs because we have determined that the codes do not represent physician services or, in a few instances, because they represent either ''bundled'' or noncovered services.
- Comments that are similar to, or duplicate, other comments which we referred to the RUC.

The process for evaluating codes included in the 5-year review involved the same basic methodology as the process for the annual physician fee schedule update, with some important changes. Because the 5-year review involved evaluating the physician work of established codes with established work RVUs, we needed compelling arguments to support changes in the assignment of work RVUs. To gather evidence to support these arguments, in addition to comparing the total physician work involved in the services under review to key reference services, we asked commenters to provide a detailed comparison of the preservice, intraservice, and postservice time involved in the key reference services selected. For this purpose, for surgical procedures, we further divided postservice time into time on the day of the procedure, time in the intensive care unit, hospital visits, and office or other outpatient visits following discharge.

We also requested comments regarding other elements of physician work, in addition to time, and the extent to which the service had changed over the last 5 years. We considered the commenters' statements regarding the complexity of each nontemporal component for the services under review and the services used as key references. The nontemporal components of work are the physician's mental effort and judgment, technical skill and physical effort, and stress resulting from the risk of mortality or iatrogenic harm to the patient. We also considered whether the service had changed over the past 5 years as the result of one of the following conditions: new technology that had become more familiar to physicians, the service having been furnished to patients who had more or less complex medical conditions, or a change in the site where the service had usually been furnished.

The public comments addressed many CPT codes for evaluation and management services. Because we introduced the new codes for these services simultaneously with the Medicare physician fee schedule in 1992 and because we have not revised them during the annual update process, their inclusion in the 5-year review presents the first opportunity for evaluating their relative physician work. In the public comments addressing these services, the major primary care specialty societies stated that the services had become more difficult than they were when the original Harvard resource-based relative value scale surveys were conducted in the late 1980's, due to factors such as decreasing lengths of hospital stay, increasing complexity of patients in inpatient and outpatient settings, documentation and case management requirements, and a better educated patient population that expects more information from physicians.

For more than 1,000 codes included in the 5-year review, we divided the CPT codes into clinical groups and another group containing all the codes identified by the RUC as potentially overvalued services. (Additional codes from the Abt Associates, Inc. studies and from the American Academy of Pediatrics' comments are discussed in sections II.C.2. and II.C.3. of this notice, respectively.) In addition, the AMA is submitting approximately 65 CPT codes

to its CPT Editorial Panel. The RUC was unable to recommend work RVUs for these codes because the services were not clearly described or could vary widely from patient to patient. We will address these codes in a future annual update of the physician fee schedule. The following is a categorization of our decisions and how they relate to the comments received from the public (including medical specialty societies) and the RUC:

- For 28 percent of the codes, we are proposing to increase the work RVUs.
- For 61 percent of the codes, we are proposing to maintain the current work RVUs. We are also proposing to maintain the values for the anesthesia codes.
- For 11 percent of the codes, we are proposing to decrease the work RVUs.

Our proposed work RVUs agree with the RUC recommendations for 93 percent of the codes. Table 1—Five-Year Review of Work Relative Value Units

Table 1 lists the codes reviewed during the 5-year review. This table includes the following information:

- *CPT/HCPCS (HCFA Common Procedure Coding System) code.* This is the CPT or alphanumeric HCPCS code for a service.
- *Modifier.* A modifier -26 is shown if the work RVUs represent the professional component of the service.
- *Description.* This is an abbreviated version of the narrative description of the code.
- *1995 work RVUs.* The work RVUs that appeared in the December 8, 1994 final rule are shown for each reviewed code.
- *Requested work RVUs.* This column identifies the work RVUs requested by commenters. We received more than one comment on some codes, and, in a few of these cases, the commenters requested different RVUs. If the comment was sent to the RUC, the table lists the RVUs sent to the RUC. The letters ''CPT'' indicate that the commenter requested that the code be referred to the CPT Editorial Panel. For some codes, we received no specific RVU recommendations. Some of these codes are included in the review because of rank order anomaly issues within a family of codes. An asterisk indicates a code identified by the RUC as potentially overvalued. The RVUs shown have not been adjusted for budget neutrality.
- *RUC recommendation.* This column identifies the work RVUs recommended by the RUC. A letter in this column indicates that the comment was rejected and not sent to the RUC. An ''A'' indicates that the comment was covered by another comment. A ''B'' indicates that the comment was not helpful. A ''C'' indicates that no change was requested. A ''D'' indicates a misinterpretation of the code. An ''E'' indicates that the comment was withdrawn by the commenter. The letters ''CPT'' indicate that the RUC has referred this code to the CPT Editorial Panel for further clarification. A ''Z'' indicates that these services have no physician work and were not subject to the 5-year review. For a general discussion of these codes, see section II.C.5. (codes without work relative value units). The letters ''POS'' indicate that the code is potentially overvalued.
- *HCFA Decision.* This column indicates whether we agreed with the RUC recommendation (''agreed''); we are proposing work RVUs that are higher than the RUC recommendation (''increased''); or we are proposing work RVUs that are less than the RUC recommendation (''decreased''). Codes for which we did not accept the RUC recommendation are discussed in greater detail following Table 1. An (a) in this column indicates that in the absence of a RUC recommendation we are proposing to maintain the present work RVUs. A (b) in this column indicates that this code is being considered in the 1996 refinement process.
- *Proposed work RVUs.* This column contains the proposed RVUs for physician work. The absence of proposed work RVUs indicates that comments on these codes were rejected or withdrawn and the work RVUs for these codes are not changing as a result of the 5-year review. The work RVUs shown have not been adjusted for budget neutrality.

BILLING CODE 4120–01–P

Table 1
Five-Year Review of Work Relative Value Units

CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
A2000		Chiropractor manip of spine	0.45	0.87	CPT[2]	(a)	0.45
M0101		Cutting or removal of corns	0.37	0.56	0.45	Decreased	0.37
10040		Acne surgery	1.34	0.80	0.80	Agreed	0.80
10061		Drainage of skin abscess	2.48	2.24	2.24	Agreed	2.24
10080		Drainage of pilonidal cyst	1.62	1.12	1.12	Agreed	1.12
10140		Drainage of hematoma/fluid	1.48	Decrease	1.48	Agreed	1.48
11000		Surgical cleansing of skin	0.91	0.45	0.60	Agreed	0.60
11001		Additional cleansing of skin	0.45	0.23	0.30	Agreed	0.30
11043		Cleansing of tissue/muscle	1.83	6.23	CPT	(a)	1.83
11044		Cleansing tissue/muscle/bone	2.28	8.93	CPT	(a)	2.28
11100		Biopsy of skin lesion	0.81		B		
11101		Biopsy, each added lesion	0.41	0.65	0.41	Agreed	0.41
11300		Shave skin lesion	0.51	0.43	0.51	Agreed	0.51
11301		Shave skin lesion	0.85	0.64	0.85	Agreed	0.85
11302		Shave skin lesion	1.05	0.78	1.05	Agreed	1.05
11303		Shave skin lesion	1.24	0.94	1.24	Agreed	1.24
11305		Shave skin lesion	0.67	0.51	0.67	Agreed	0.67
11306		Shave skin lesion	0.99	0.74	0.99	Agreed	0.99
11307		Shave skin lesion	1.14	0.86	1.14	Agreed	1.14
11308		Shave skin lesion	1.41	1.06	1.41	Agreed	1.41
11310		Shave skin lesion	0.73	0.55	0.73	Agreed	0.73
11311		Shave skin lesion	1.05	0.78	1.05	Agreed	1.05
11312		Shave skin lesion	1.20	0.91	1.20	Agreed	1.20
11313		Shave skin lesion	1.62	1.22	1.62	Agreed	1.62
11441		Removal of skin lesion	1.56	Decrease	1.56	Agreed	1.56
11710		Scraping of 1-5 nails	0.32	0.28	CPT	(a)	0.32
11711		Scraping of additional nails	0.20	0.23	CPT	(a)	0.20
11731		Removal of second nail plate	0.55	0.57	0.57	Agreed	0.57
11732		Remove additional nail plate	0.38	0.57	0.57	Agreed	0.57
11750		Removal of nail bed	1.66	2.12	1.66	Agreed	1.66
11752		Remove nail bed/finger tip	2.37	4.84	2.37	Agreed	2.37
11760		Reconstruction of nail bed	1.53	2.35	E		
11762		Reconstruction of nail bed	2.84	4.73	2.84	Agreed	2.84
11901		Added skin lesion injections	0.80	1.34	0.80	Agreed	0.80
11960		Insert tissue expander(s)	6.04	16.00	8.00	Agreed	8.00
11971		Remove tissue expander(s)	1.51	3.60	CPT	(a)	1.51
13131		Repair of wound or lesion	3.74	Increase	3.74	Agreed	3.74
13132		Repair of wound or lesion	4.21	4.32	5.75	Agreed	5.75
13150		Repair of wound or lesion	3.76	Increase	3.76	Agreed	3.76
13151		Repair of wound or lesion	4.40	Increase	4.40	Agreed	4.40
13160		Late closure of wound	9.53	Increase	9.53	Agreed	9.53
13300		Repair of wound or lesion	5.11	Increase	CPT	(a)	5.11
14300		Skin tissue rearrangement	10.76	CPT	CPT	(a)	10.76
15000		Skin graft procedure	1.95	4.02	CPT	(a)	1.95
15100		Skin split graft procedure	8.05	Increase	B		
15101		Skin split graft procedure	1.72	2.68	CPT	(a)	1.72
15120		Skin split graft procedure	9.14	Increase	A		
15121		Skin split graft procedure	2.67	3.05	CPT	(a)	2.67
15201		Skin full graft procedure	1.32	2.49	CPT	(a)	1.32
15221		Skin full graft procedure	1.19	2.47	CPT	(a)	1.19
15241		Skin full graft procedure	1.86	2.77	CPT	(a)	1.86
15261		Skin full graft procedure	2.23	3.19	CPT	(a)	2.23
15570		Form skin pedicle flap	3.75	9.00	8.39	Decreased	3.75
15572		Form skin pedicle flap	3.80	11.00	8.59	Decreased	3.80
15574		Form skin pedicle flap	3.85	9.00	8.79	Decreased	3.85
15576		Form skin pedicle flap	4.27	Increase	7.85	Decreased	4.27

1 All CPT codes and descriptors copyright 1995 American Medical Association.
2 Although A2000 is presently a HCPCS code, a request for a CPT code is presently pending.

Table 1
Five-Year Review of Work Relative Value Units

CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
15580		Attach skin pedicle graft	3.30	11.33	9.00	Decreased	5.40
15732		Muscle-skin graft, head/neck	12.10	14.00	16.52	Agreed	16.52
15734		Muscle-skin graft, trunk	16.52	Increase	B		
15736		Muscle-skin graft, arm	15.26	12.50	15.26	Agreed	15.26
15738		Muscle-skin graft, leg	10.07	14.50	16.52	Agreed	16.52
15755		Microvascular flap graft	28.33	41.68	CPT	(a)	28.33
15958		Remove thigh pressure sore	13.89	15.49	13.89	Agreed	13.89
16000		Initial treatment of burn(s)	0.89	Decrease	0.89	Agreed	0.89
16035		Incision of burn scab	4.53	Increase	4.53	Agreed	4.53
17000		Destroy benign/premal lesion	0.64	Decrease	0.64	Decreased	0.36
17001		Destruction of add'l lesions	0.19	Decrease	0.19	Decreased	0.14
17002		Destruction of add'l lesions	0.19	Decrease	0.19	Decreased	0.14
17010		Destruction skin lesion(s)	1.01	Increase	B		
17105		Destruction of skin lesions	0.76	Increase	B		
17106		Destruction of skin lesions	4.54	2.27	4.54	Agreed	4.54
17107		Destruction of skin lesions	9.06	5.06	9.06	Agreed	9.06
17108		Destruction of skin lesions	13.10	7.10	13.10	Agreed	13.10
17304		Chemosurgery of skin lesion	7.60	12.20*	7.60	Agreed	7.60
17305		2nd stage chemosurgery	2.85	6.10	B		
17306		3rd stage chemosurgery	2.85	6.10	B		
17307		Followup skin lesion therapy	2.85	6.10	B		
19120		Removal of breast lesion	4.84	5.66	5.35	Agreed	5.35
19140		Removal of breast tissue	4.90	4.85	4.85	Agreed	4.85
19160		Removal of breast tissue	6.65	5.74	5.75	Agreed	5.75
19180		Removal of breast	8.15	8.09	8.09	Agreed	8.09
19318		Reduction of large breast	11.08	Increase	15.00	Agreed	15.00
19325		Enlarge breast with implant	8.05	10.64	8.05	Agreed	8.05
19350		Breast reconstruction	8.21	10.16	8.52	Agreed	8.52
19357		Breast reconstruction	16.72		B		
19361		Breast reconstruction	17.82		B		
19364		Breast reconstruction	27.60		B		
19371		Removal of breast capsule	8.84		B		
20225		Bone biopsy, trocar/needle	1.87	Increase	1.87	Agreed	1.87
20610		Drain/inject joint/bursa	0.79	1.05	E		
20661		Application of head brace	4.27	2.84	E		
21015		Resection of facial tumor	4.94	*	4.94	Agreed	4.94
21025		Excision of bone, lower jaw	5.03	8.98	8.92	Decreased	5.03
21030		Removal of face bone lesion	7.05	Decrease	6.04	Agreed	6.04
21031		Remove exostosis, mandible	2.01	5.30	3.14	Agreed	3.14
21032		Remove exostosis, maxilla	4.27		3.14	Agreed	3.14
21041		Removal of jaw bone lesion	5.03	7.08	6.04	Agreed	6.04
21110		Interdental fixation	5.03	5.20	5.03	Agreed	5.03
21125		Augmentation lower jaw bone	6.22	10.50	6.22	Agreed	6.22
21150		Reconstruct midface, lefort	24.41	45.00	24.41	Agreed	24.41
21175		Reconstruct orbit/forehead	32.21		B		
21188		Reconstruction of midface	21.47	20.30	21.47	Agreed	21.47
21194		Reconstruct lower jaw bone	18.81	19.60	18.81	Agreed	18.81
21243		Reconstruction of jaw joint	18.98	21.15	18.98	Agreed	18.98
21270		Augmentation cheek bone	12.10	10.50	12.10	Agreed	12.10
21320		Treatment of nose fracture	1.82	3.00	1.82	Agreed	1.82
21330		Repair of nose fracture	5.03	10.00	5.03	Agreed	5.03
21338		Repair nasoethmoid fracture	6.04	12.00	6.04	Agreed	6.04
21339		Repair nasoethmoid fracture	7.56	16.00	7.56	Agreed	7.56
21435		Repair craniofacial fracture	16.12	30.00	16.12	Agreed	16.12
21453		Treat lower jaw fracture	5.18	9.50	5.18	Agreed	5.18
21462		Repair lower jaw fracture	9.15	11.06	9.15	Agreed	9.15
21485		Reset dislocated jaw	3.73	5.50	3.73	Agreed	3.73

Table 1
Five-Year Review of Work Relative Value Units

CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
21550		Biopsy of neck/chest	2.01		B		
21610		Partial removal of rib	8.54	18.51	13.66	Agreed	13.66
21930		Remove lesion, back or flank	6.55	4.82	4.82	Agreed	4.82
22210		Revision of neck spine	22.51	19.76	CPT	(b)	
22315		Treat spine fracture	8.36	6.05	CPT	(b)	
22327		Repair thorax spine fracture	17.56	8.14	CPT	(b)	
22554		Neck spine fusion	18.14	8.02	CPT	(b)	
22558		Lumbar spine fusion	22.12	14.68	CPT	(b)	
22610		Thorax spine fusion	15.11	20.47	CPT	(b)	
22612		Lumbar spine fusion	22.25	13.32	CPT	(b)	
22800		Fusion of spine	16.92	19.08	CPT	(b)	
22802		Fusion of spine	31.31	24.55	CPT	(b)	
22812		Fusion of spine	27.20	30.89	CPT	(b)	
22840		Insert spine fixation device	12.54	18.00	CPT	(b)	
22842		Insert spine fixation device	14.42	8.27	CPT	(b)	
22845		Insert spine fixation device	12.48	16.00	CPT	(b)	
22849		Reinsert spinal fixation	12.86	17.55	17.55	Agreed	17.55
22855		Remove spine fixation device	9.10	14.11	14.11	Agreed	14.11
22900		Remove abdominal wall lesion	6.56	5.13	5.13	Agreed	5.13
23065		Biopsy shoulder tissues	2.24		B		
23222		Partial removal of humerus	16.64	35.26	22.78	Agreed	22.78
23395		Muscle transfer,shoulder/arm	12.42	Increase	16.00	Agreed	16.00
23420		Repair of shoulder	12.60	Increase	12.60	Agreed	12.60
23466		Repair shoulder capsule	13.65	Increase	13.65	Agreed	13.65
23472		Reconstruct shoulder joint	16.09	23.03	16.09	Agreed	16.09
23615		Repair humerus fracture	8.38	Increase	8.38	Agreed	8.38
23802		Fusion of shoulder joint	14.67	Increase	15.62	Agreed	15.62
23920		Amputation at shoulder joint	13.60	Increase	13.60	Agreed	13.60
24102		Remove elbow joint lining	7.57	9.52	E		
24363		Replace elbow joint	17.66	22.91	17.66	Agreed	17.66
24435		Repair humerus with graft	12.19	Increase	12.19	Agreed	12.19
24515		Repair humerus fracture	10.92	12.93	E		
24546		Repair humerus fracture	14.66	Increase	14.66	Agreed	14.66
25065		Biopsy forearm soft tissues	2.39	*	1.94	Agreed	1.94
25107		Remove wrist joint cartilage	5.89	Increase	5.89	Agreed	5.89
25111		Remove wrist tendon lesion	3.24	4.23	E		
25115		Remove wrist/forearm lesion	6.26	Increase	8.00	Agreed	8.00
25420		Repair/graft radius & ulna	15.34	19.50	15.34	Agreed	15.34
25440		Repair/graft wrist bone	9.95	12.10	E		
25446		Wrist replacement	15.52	21.97	15.52	Agreed	15.52
25575		Repair fracture radius/ulna	9.47	Increase	9.47	Agreed	9.47
25628		Repair wrist bone fracture	7.81	Increase	7.81	Agreed	7.81
25810		Fusion/graft of wrist joint	9.79	14.57	9.79	Agreed	9.79
26010		Drainage of finger abscess	1.49	Decrease	1.49	Agreed	1.49
26123		Release palm contracture	8.64	8.68	8.64	Agreed	8.64
26356		Repair finger/hand tendon	7.05	8.82	7.05	Agreed	7.05
26442		Release palm & finger tendon	6.10	Increase	7.45	Agreed	7.45
26449		Release forearm/hand tendon	6.39	Increase	6.39	Agreed	6.39
26531		Revise knuckle with implant	7.57	10.46	7.57	Agreed	7.57
26992		Drainage of bone lesion	13.97	*	12.30	Agreed	12.30
27001		Incision of hip tendon	7.70	*	6.50	Agreed	6.50
27003		Incision of hip tendon	6.53		6.62	Agreed	6.62
27006		Incision of hip tendons	9.50	*	9.00	Agreed	9.00
27040		Biopsy of soft tissues	3.26	*	2.71	Agreed	2.71
27049		Remove tumor, hip/pelvis	12.52	Increase	12.52	Agreed	12.52
27052		Biopsy of hip joint	5.45	Increase	5.45	Agreed	5.45
27076		Extensive hip surgery	17.93	Increase	20.23	Agreed	20.23

Table 1
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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
27090		Removal of hip prosthesis	12.00	*	10.34	Agreed	10.34
27130		Total hip replacement	18.68	23.15	E		
27134		Revise hip joint replacement	24.54	40.19	27.00	Agreed	27.00
27137		Revise hip joint replacement	18.67	Increase	20.00	Agreed	20.00
27138		Revise hip joint replacement	18.93	Increase	21.00	Agreed	21.00
27146		Incision of hip bone	13.72	Increase	16.55	Agreed	16.55
27147		Revision of hip bone	17.58	28.20	19.70	Agreed	19.70
27151		Incision of hip bones	18.58	Increase	21.50	Agreed	21.50
27156		Revision of hip bones	20.16	Increase	23.62	Agreed	23.62
27181		Repair slipped epiphysis	13.80	21.15	13.80	Agreed	13.80
27227		Treat hip fracture(s)	15.39	Increase	22.00	Agreed	22.00
27228		Treat hip fracture(s)	17.90	49.53	25.59	Agreed	25.59
27244		Repair of thigh fracture	14.35	11.75	E		
27252		Treat hip dislocation	9.47	4.93	E		
27259		Repair of hip dislocation	18.03	24.00	20.50	Agreed	20.50
27265		Treatment of hip dislocation	5.58	*	4.74	Agreed	4.74
27266		Treatment of hip dislocation	7.73	*	6.96	Agreed	6.96
27284		Fusion of hip joint	15.62	Increase	15.62	Agreed	15.62
27286		Fusion of hip joint	15.65	Increase	15.65	Agreed	15.65
27323		Biopsy thigh soft tissues	2.67	*	2.23	Agreed	2.23
27329		Remove tumor, thigh/knee	11.74	Increase	13.00	Agreed	13.00
27365		Extensive leg surgery	13.84	26.44	15.00	Agreed	15.00
27395		Lengthening of thigh tendons	10.96	10.70	E		
27397		Transplants of thigh tendons	9.33	Increase	10.53	Agreed	10.53
27428		Reconstruction, knee	10.68	Increase	13.28	Agreed	13.28
27429		Reconstruction, knee	11.86	Increase	14.67	Agreed	14.67
27435		Incision of knee joint	8.74	Increase	8.74	Agreed	8.74
27454		Realignment of thigh bone	12.26	Increase	16.55	Agreed	16.55
27457		Realignment of knee	12.60	Increase	12.60	Agreed	12.60
27486		Revise knee joint replace	16.63	Increase	18.00	Agreed	18.00
27487		Revise knee joint replace	21.69	36.66	24.00	Agreed	24.00
27488		Removal of knee prosthesis	14.48	Increase	14.48	Agreed	14.48
27506		Repair of thigh fracture	15.93	Increase	15.93	Agreed	15.93
27513		Treatment of thigh fracture	16.78	Increase	16.78	Agreed	16.78
27536		Repair of knee fracture	14.51	Increase	14.51	Agreed	14.51
27550		Treat knee dislocation	5.53	*	5.53	Agreed	5.53
27580		Fusion of knee	12.26	Increase	18.20	Agreed	18.20
27607		Treat lower leg bone lesion	7.05	9.28	7.05	Agreed	7.05
27685		Revision of lower leg tendon	6.08	5.29	E		
27712		Realignment of lower leg	11.81	Increase	13.20	Agreed	13.20
27724		Repair/graft of tibia	12.11	Increase	13.88	Agreed	13.88
27725		Repair of lower leg	11.04	16.10	14.50	Agreed	14.50
27759		Repair of tibia fracture	12.60	Increase	12.60	Agreed	12.60
27827		Treat lower leg fracture	9.90	Increase	12.95	Agreed	12.95
27828		Treat lower leg fracture	12.33	Increase	15.12	Agreed	15.12
27870		Fusion of ankle joint	10.42	15.39	13.00	Agreed	13.00
27894		Decompression of leg	7.64	Increase	9.13	Agreed	9.13
28002		Treatment of foot infection	3.76	4.47	3.76	Agreed	3.76
28010		Incision of toe tendon	2.97	*	POS		2.97
28043		Excision of foot lesion	3.41	2.70	E		
28080		Removal of foot lesion	3.18	4.76	3.18	Agreed	3.18
28113		Part removal of metatarsal	4.09	4.23	4.23	Agreed	4.23
28114		Removal of metatarsal heads	7.16	10.51	7.16	Agreed	7.16
28116		Revision of foot	6.17	Increase	7.00	Agreed	7.00
28120		Part removal of ankle/heel	4.81	8.92	4.81	Agreed	4.81
28130		Removal of ankle bone	7.33	Increase	7.33	Agreed	7.33
28190		Removal of foot foreign body	1.91	Decrease	1.91	Agreed	1.91

Table 1
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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
28192		Removal of foot foreign body	4.49	3.29	E		
28200		Repair of foot tendon	4.45	4.26	4.45	Agreed	4.45
28202		Repair/graft of foot tendon	6.38	5.72	6.38	Agreed	6.38
28208		Repair of foot tendon	4.11	3.85	4.11	Agreed	4.11
28220		Release of foot tendon	4.27	3.71	4.27	Agreed	4.27
28222		Release of foot tendons	5.36	4.48	5.36	Agreed	5.36
28225		Release of foot tendon	3.42	3.28	3.42	Agreed	3.42
28226		Release of foot tendons	4.27	3.82	4.27	Agreed	4.27
28230		Incision of foot tendon(s)	4.00	3.52	4.00	Agreed	4.00
28232		Incision of toe tendon	3.26	3.08	3.26	Agreed	3.26
28234		Incision of foot tendon	3.19	3.07	3.19	Agreed	3.19
28238		Revision of foot tendon	7.27	8.20	7.27	Agreed	7.27
28261		Revision of foot tendon	8.92	Increase	10.95	Agreed	10.95
28262		Revision of foot and ankle	12.19	16.20	15.00	Agreed	15.00
28270		Release of foot contracture	4.58	3.94	4.58	Agreed	4.58
28272		Release of toe joint, each	3.67	3.31	3.67	Agreed	3.67
28285		Repair of hammertoe	4.41	5.24	4.41	Agreed	4.41
28288		Partial removal of foot bone	3.73	4.40	4.23	Agreed	4.23
28292		Correction of bunion	6.24	7.32	6.24	Agreed	6.24
28293		Correction of bunion	8.25	8.60	8.25	Agreed	8.25
28299		Correction of bunion	8.46	11.55	8.46	Agreed	8.46
28309		Incision of metatarsals	8.83	Increase	12.00	Agreed	12.00
28341		Resect enlarged toe	7.86	6.67	7.86	Agreed	7.86
28344		Repair extra toe(s)	3.89	5.30	3.89	Agreed	3.89
28415		Repair of heel fracture	13.28	Increase	15.00	Agreed	15.00
28476		Repair metatarsal fracture	3.15	4.66	3.15	Agreed	3.15
28496		Repair big toe fracture	2.18	4.84	2.18	Agreed	2.18
28531		Treat sesamoid bone fracture	2.01	3.60	2.01	Agreed	2.01
28576		Treat foot dislocation	3.75	5.29	3.75	Agreed	3.75
28615		Repair foot dislocation	5.12	Increase	6.99	Agreed	6.99
28636		Treat toe dislocation	2.67	4.92	2.67	Agreed	2.67
28666		Treat toe dislocation	2.56	4.60	2.56	Agreed	2.56
28705		Fusion of foot bones	14.23	Increase	14.23	Agreed	14.23
28715		Fusion of foot bones	12.18	16.20	12.18	Agreed	12.18
28730		Fusion of foot bones	9.91	Increase	9.91	Agreed	9.91
28735		Fusion of foot bones	10.07	Increase	10.07	Agreed	10.07
28737		Revision of foot bones	8.89	Increase	8.89	Agreed	8.89
28740		Fusion of foot bones	6.20	Increase	7.40	Agreed	7.40
28750		Fusion of big toe joint	4.77	7.77	6.90	Agreed	6.90
28755		Fusion of big toe joint	4.48	5.50	4.48	Agreed	4.48
28760		Fusion of big toe joint	5.47	9.82	7.00	Agreed	7.00
29700		Removal/revision of cast	0.88	0.57	0.57	Agreed	0.57
29705		Removal/revision of cast	1.12	0.76	0.76	Agreed	0.76
29840		Wrist arthroscopy	5.39	10.93	5.39	Agreed	5.39
29843		Wrist arthroscopy/surgery	5.86	11.82	5.86	Agreed	5.86
29844		Wrist arthroscopy/surgery	6.22	11.13	6.22	Agreed	6.22
29845		Wrist arthroscopy/surgery	7.34	11.68	7.34	Agreed	7.34
29846		Wrist arthroscopy/surgery	6.60	12.08	6.60	Agreed	6.60
29847		Wrist arthroscopy/surgery	6.93	12.83	6.93	Agreed	6.93
29848		Wrist arthroscopy/surgery	4.04	5.70	4.04	Agreed	4.04
29876		Knee arthroscopy/surgery	7.51	Increase	7.51	Agreed	7.51
29877		Knee arthroscopy/surgery	7.05	5.99	E		
29882		Knee arthroscopy/surgery	8.24	10.57	8.24	Agreed	8.24
29888		Knee arthroscopy/surgery	13.28	20.44	E		
29889		Knee arthroscopy/surgery	10.76	Increase	14.41	Agreed	14.41
30020		Drainage of nose lesion	1.38	2.50	1.38	Agreed	1.38
30545		Repair nasal defect	10.89	14.00	10.89	Agreed	10.89

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30903		Control of nosebleed	1.54	2.50	1.54	Agreed	1.54
30905		Control of nosebleed	1.97	3.50	1.97	Agreed	1.97
30906		Repeat control of nosebleed	2.45	4.00	2.45	Agreed	2.45
30920		Ligation upper jaw artery	7.46	10.00	8.79	Agreed	8.79
31090		Exploration of sinuses	8.65	20.00	CPT	(a)	8.65
31225		Removal of upper jaw	15.19	25.00	17.50	Agreed	17.50
31230		Removal of upper jaw	21.06	30.00	20.00	Agreed	20.00
31290		Nasal/sinus endoscopy, surg	12.87	24.36	16.05	Agreed	16.05
31291		Nasal/sinus endoscopy, surg	13.52	26.32	17.00	Agreed	17.00
31292		Nasal/sinus endoscopy, surg	10.45	13.54	13.83	Agreed	13.83
31293		Nasal/sinus endoscopy, surg	11.43	15.14	15.15	Agreed	15.15
31294		Nasal/sinus endoscopy, surg	13.06	20.33	18.00	Agreed	18.00
31320		Diagnostic incision larynx	4.54	10.00	4.54	Agreed	4.54
31360		Removal of larynx	15.19	25.00	15.19	Agreed	15.19
31365		Removal of larynx	21.83	35.00	21.83	Agreed	21.83
31367		Partial removal of larynx	18.98	30.00	18.98	Agreed	18.98
31368		Partial removal of larynx	23.72	40.00	23.72	Agreed	23.72
31370		Partial removal of larynx	18.50	30.50	18.50	Agreed	18.50
31380		Partial removal of larynx	18.50	25.00	18.50	Agreed	18.50
31382		Partial removal of larynx	18.50	28.00	18.50	Agreed	18.50
31390		Removal of larynx & pharynx	21.15	40.00	25.00	Agreed	25.00
31395		Reconstruct larynx & pharynx	26.19	55.00	28.00	Agreed	28.00
31400		Revision of larynx	9.06	18.00	9.06	Agreed	9.06
31502		Change of windpipe airway	0.65	Increase	0.65	Agreed	0.65
31513		Injection into vocal cord	2.10	4.00	2.10	Agreed	2.10
31520		Diagnostic laryngoscopy	2.56	*	2.56	Agreed	2.56
31531		Operative laryngoscopy	3.73		3.79	Decreased	3.39
31536		Operative laryngoscopy	3.17		3.56	Decreased	3.16
31541		Operative laryngoscopy	3.56	5.50	4.53	Decreased	4.13
31561		Operative laryngoscopy	4.90	7.00	5.86	Decreased	5.46
31571		Laryngoscopy with injection	3.52	5.00	4.27	Decreased	3.87
31580		Revision of larynx	11.01	17.00	11.01	Agreed	11.01
31587		Revision of larynx	7.98	12.00	10.00	Agreed	10.00
31600		Incision of windpipe	3.62	7.35	3.62	Agreed	3.62
31601		Incision of windpipe	4.45	10.00	4.45	Agreed	4.45
31603		Incision of windpipe	4.15	4.40	4.15	Agreed	4.15
31610		Incision of windpipe	7.87	12.00	7.87	Agreed	7.87
31611		Surgery/speech prosthesis	5.03	13.00	5.03	Agreed	5.03
31614		Repair windpipe opening	6.11	10.00	6.11	Agreed	6.11
31750		Repair of windpipe	9.05	15.00	11.73	Agreed	11.73
31780		Reconstruct windpipe	16.14	30.00	16.14	Agreed	16.14
32000		Drainage of chest	1.54	3.98	1.54	Agreed	1.54
32020		Insertion of chest tube	3.98	4.94	3.98	Agreed	3.98
32100		Exploration/biopsy of chest	10.07	19.56	10.07	Agreed	10.07
32440		Removal of lung	19.15	25.15	19.15	Agreed	19.15
32480		Partial removal of lung	16.84	25.09	16.84	Agreed	16.84
32500		Partial removal of lung	13.10	19.02	13.10	Agreed	13.10
32602		Thoracoscopy, diagnostic	5.96	11.81	5.96	Agreed	5.96
33010		Drainage of heart sac	2.24	6.00	2.24	Agreed	2.24
33208		Insertion of heart pacemaker	7.28	8.76	7.28	Agreed	7.28
33244		Remove generator	8.34	12.00	8.34	Agreed	8.34
33425		Repair of mitral valve	25.57	29.42	25.57	Agreed	25.57
33426		Repair of mitral valve	26.07	29.42	29.42	Agreed	29.42
33427		Repair of mitral valve	32.07	35.00	32.07	Agreed	32.07
33510		CABG, vein, single	23.29	23.47	23.29	Agreed	23.29
33511		CABG, vein, two	25.57	25.97	25.57	Agreed	25.57
33512		CABG, vein, three	27.84	28.47	27.84	Agreed	27.84

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33513		CABG, vein, four	30.12	30.97	30.12	Agreed	30.12
33514		CABG, vein, five	32.39	33.47	32.39	Agreed	32.39
33516		CABG, vein, six+	34.66	35.97	34.66	Agreed	34.66
33530		Coronary artery, bypass/reop	5.86	11.71	5.86	Agreed	5.86
33533		CABG, arterial, single	24.00	25.65	24.00	Agreed	24.00
33534		CABG, arterial, two	26.99	30.33	26.99	Agreed	26.99
33535		CABG, arterial, three	29.98	35.01	29.98	Agreed	29.98
33536		CABG, arterial, four+	32.96	39.69	32.96	Agreed	32.96
33870		Transverse aortic arch graft	37.74	49.91	37.74	Agreed	37.74
33875		Thoracic aorta graft	26.94	31.23	31.23	Agreed	31.23
33877		Thoracoabdominal graft	40.29	Increase	B		
33970		Aortic circulation assist	8.05	*	POS		8.05
34201		Removal of artery clot	8.04	12.59	8.04	Agreed	8.04
35081		Repair defect of artery	22.15	32.10	26.23	Agreed	26.23
35082		Repair artery rupture, aorta	28.82	37.35	34.20	Agreed	34.20
35091		Repair defect of artery	28.10	29.61	33.16	Agreed	33.16
35102		Repair defect of artery	23.44	37.00	28.80	Agreed	28.80
35301		Rechanneling of artery	15.95	18.76	17.79	Agreed	17.79
35470		Repair arterial blockage	8.63	Decrease	8.63	Agreed	8.63
35471		Repair arterial blockage	10.07	Decrease	10.07	Agreed	10.07
35472		Repair arterial blockage	6.91	Decrease	6.91	Agreed	6.91
35473		Repair arterial blockage	6.04	Decrease	6.04	Agreed	6.04
35474		Repair arterial blockage	7.36	Decrease	7.36	Agreed	7.36
35475		Repair arterial blockage	9.49	Decrease	9.49	Agreed	9.49
35476		Repair venous blockage	6.04	Decrease	6.04	Agreed	6.04
35490		Atherectomy, percutaneous	11.08	Decrease	11.08	Agreed	11.08
35491		Atherectomy, percutaneous	7.61	Decrease	7.61	Agreed	7.61
35492		Atherectomy, percutaneous	6.65	Decrease	6.65	Agreed	6.65
35493		Atherectomy, percutaneous	8.10	Decrease	8.10	Agreed	8.10
35494		Atherectomy, percutaneous	10.44	Decrease	10.44	Agreed	10.44
35495		Atherectomy, percutaneous	9.49	Decrease	9.49	Agreed	9.49
35556		Artery bypass graft	15.47	23.18	19.37	Agreed	19.37
35566		Artery bypass graft	20.21	29.06	24.45	Agreed	24.45
35583		Vein bypass graft	15.97	22.96	20.03	Agreed	20.03
35585		Vein bypass graft	19.05	27.39	25.92	Agreed	25.92
35654		Artery bypass graft	17.62	22.79	17.62	Agreed	17.62
35656		Artery bypass graft	13.86	18.73	17.84	Agreed	17.84
35681		Artery bypass graft	8.05	3.93	3.93	Agreed	3.93
35875		Removal of clot in graft	9.07	8.19	8.19	Agreed	8.19
36010		Place catheter in vein	2.43	*	2.43	Agreed	2.43
36215		Place catheter in artery	4.47	5.07	4.68	Agreed	4.68
36218		Place catheter in artery	1.01	2.75	1.01	Agreed	1.01
36245		Place catheter in artery	5.07		4.68	Agreed	4.68
36248		Place catheter in artery	1.01	2.75	1.01	Agreed	1.01
36489		Insertion of catheter, vein	1.22	2.43	1.22	Agreed	1.22
36520		Plasma and/or cell exchange	1.74	Increase	1.74	Agreed	1.74
36533		Insertion of access port	3.82	5.70	5.00	Agreed	5.00
36534		Revision of access port	3.79	2.73	2.73	Agreed	2.73
36620		Insertion catheter, artery	1.15	2.01	1.15	Agreed	1.15
36821		Artery-vein fusion	8.39	*	8.39	Agreed	8.39
36830		Artery-vein graft	7.78	12.75	11.25	Agreed	11.25
37201		Transcatheter therapy infuse	7.25	*	7.25	Decreased	5.00
37205		Transcatheter stent	8.28	Decrease	8.28	Agreed	8.28
37206		Transcatheter stent	4.13	Decrease	4.13	Agreed	4.13
37730		Removal of leg veins	6.63	8.60	6.63	Agreed	6.63
38230		Bone marrow collection	3.16	Increase	4.22	Agreed	4.22
38720		Removal of lymph nodes, neck	12.29	17.00	12.29	Agreed	12.29

Table 1
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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
38724		Removal of lymph nodes, neck	13.22	20.00	13.22	Agreed	13.22
39400		Visualization of chest	5.11	8.30	5.11	Agreed	5.11
40490		Biopsy of lip	1.22		B		
40806		Incision of lip fold	0.31	1.19	0.31	Agreed	0.31
40808		Biopsy of mouth lesion	0.91	2.00	0.91	Agreed	0.91
40820		Treatment of mouth lesion	1.23	3.00	1.23	Agreed	1.23
40843		Reconstruction of mouth	11.63	12.47	11.63	Agreed	11.63
41000		Drainage of mouth lesion	1.25	3.00	1.25	Agreed	1.25
41005		Drainage of mouth lesion	1.21	2.65	1.21	Agreed	1.21
41010		Incision of tongue fold	1.19	*	1.01	Agreed	1.01
41112		Excision of tongue lesion	2.63	5.00	2.63	Agreed	2.63
41113		Excision of tongue lesion	3.09	7.00	3.09	Agreed	3.09
41115		Excision of tongue fold	1.69	2.26	1.69	Agreed	1.69
41116		Excision of mouth lesion	2.36	5.00	2.36	Agreed	2.36
41135		Tongue and neck surgery	14.29	27.00	21.15	Agreed	21.15
41145		Tongue removal; neck surgery	27.58	39.00	27.58	Agreed	27.58
41150		Tongue, mouth, jaw surgery	19.36	33.50	21.00	Agreed	21.00
41155		Tongue, jaw, & neck surgery	23.40	45.00	25.60	Agreed	25.60
41252		Repair tongue laceration	2.92	5.00	2.92	Agreed	2.92
42106		Excision lesion, mouth roof	2.63	2.44	2.05	Agreed	2.05
42120		Remove palate/lesion	5.39	8.00	5.39	Agreed	5.39
42145		Repair,palate,pharynx/uvula	7.04	12.00	7.04	Agreed	7.04
42182		Repair palate	3.78	6.00	3.78	Agreed	3.78
42200		Reconstruct cleft palate	9.48	11.75	11.25	Agreed	11.25
42210		Reconstruct cleft palate	10.02	12.33	13.75	Agreed	13.75
42260		Repair nose to lip fistula	4.17	5.87	9.18	Agreed	9.18
42305		Drainage of salivary gland	5.59	8.00	5.59	Agreed	5.59
42320		Drainage of salivary gland	2.30	4.00	2.30	Agreed	2.30
42340		Removal of salivary stone	4.47	8.00	4.47	Agreed	4.47
42415		Excise parotid gland/lesion	16.12	17.84	16.12	Agreed	16.12
42426		Excise parotid gland/lesion	19.88	26.59	19.88	Agreed	19.88
42500		Repair salivary duct	4.06	10.00	4.06	Agreed	4.06
42505		Repair salivary duct	5.92	14.00	5.92	Agreed	5.92
42507		Parotid duct diversion	5.96	14.00	5.96	Agreed	5.96
42508		Parotid duct diversion	8.64	20.00	8.64	Agreed	8.64
42720		Drainage of throat abscess	2.61	6.00	4.53	Agreed	4.53
42725		Drainage of throat abscess	7.60	14.00	9.50	Agreed	9.50
42809		Remove pharynx foreign body	1.76	2.50	1.76	Agreed	1.76
42815		Excision of neck cyst	6.75	12.00	6.75	Agreed	6.75
42820		Remove tonsils and adenoids	3.59	4.95	3.59	Agreed	3.59
42880		Excise nose/throat lesion	6.01	10.00	CPT	(a)	6.01
42961		Control throat bleeding	5.18	9.00	5.18	Agreed	5.18
42962		Control throat bleeding	6.64	11.00	6.64	Agreed	6.64
42972		Control nose/throat bleeding	6.55	10.00	6.55	Agreed	6.55
43200		Esophagus endoscopy	1.59	5.00	1.59	Agreed	1.59
43235		Upper GI endoscopy,diagnosis	2.39	4.23	2.39	Agreed	2.39
43239		Upper GI endoscopy, biopsy	2.69	4.15	2.69	Agreed	2.69
43248		Upper GI endoscopy/guidewire	3.15	Increase	B		
43260		Endoscopy,bile duct/pancreas	5.96	8.51	5.96	Agreed	5.96
43262		Endoscopy,bile duct/pancreas	7.39	9.94	7.39	Agreed	7.39
43420		Repair esophagus opening	10.19	11.89	10.19	Agreed	10.19
43456		Dilate esophagus	3.52	2.57	2.57	Agreed	2.57
43458		Dilation of esophagus	3.06	Increase	B		
43610		Excision of stomach lesion	10.11	15.57	10.11	Agreed	10.11
43750		Place gastrostomy tube	5.71	7.65	4.27	Agreed	4.27
43830		Place gastrostomy tube	4.84	7.50	7.50	Decreased	6.52
44010		Incision of small bowel	9.24	10.05	9.24	Agreed	9.24

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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
44020		Exploration of small bowel	10.69	9.95	10.69	Agreed	10.69
44140		Partial removal of colon	16.97	20.43	16.97	Agreed	16.97
44141		Partial removal of colon	17.36	18.79	17.36	Agreed	17.36
44143		Partial removal of colon	15.00	18.79	17.36	Agreed	17.36
44144		Partial removal of colon	15.00	18.79	16.97	Agreed	16.97
44145		Partial removal of colon	21.29	23.62	21.29	Agreed	21.29
44152		Removal of colon/ileostomy	22.98	25.64	22.98	Agreed	22.98
44160		Removal of colon	14.09	14.52	14.09	Agreed	14.09
44322		Colostomy with biopsies	10.31	11.70	10.31	Agreed	10.31
44388		Colon endoscopy	2.82	7.71	2.82	Agreed	2.82
44389		Colonoscopy with biopsy	3.13	4.01	3.13	Agreed	3.13
44390		Colonoscopy for foreign body	3.83	4.72	3.83	Agreed	3.83
44391		Colonoscopy for bleeding	4.32	5.73	4.32	Agreed	4.32
44392		Colonoscopy & polypectomy	3.82	4.70	3.82	Agreed	3.82
44393		Colonoscopy, lesion removal	4.84	5.87	4.84	Agreed	4.84
44394		Colonoscopy w/snare	4.43	5.31	4.43	Agreed	4.43
44950		Appendectomy	6.06	8.22	8.25	Agreed	8.25
45110		Removal of rectum	21.68	28.78	21.68	Agreed	21.68
45303		Proctosigmoidoscopy	0.50	0.80	0.80	Agreed	0.80
45330		Sigmoidoscopy, diagnostic	0.96	Increase	B		
45331		Sigmoidoscopy and biopsy	1.26	Increase	B		
45378		Diagnostic colonoscopy	3.70	4.95	3.70	Agreed	3.70
45380		Colonoscopy and biopsy	4.01	5.26	4.01	Agreed	4.01
45550		Repair rectum;remove sigmoid	13.38	18.68	16.97	Agreed	16.97
45905		Dilation of anal sphincter	1.51	Increase	B		
46040		Incision of rectal abscess	4.90	4.41	4.41	Agreed	4.41
46255		Hemorrhoidectomy	4.95	6.24	4.95	Agreed	4.95
46260		Hemorrhoidectomy	6.70	7.29	6.70	Agreed	6.70
46261		Remove hemorrhoids & fissure	6.54	7.77	7.62	Agreed	7.62
46262		Remove hemorrhoids & fistula	6.77	7.99	8.01	Agreed	8.01
46900		Destruction, anal lesion(s)	1.81	0.56	CPT	(a)	1.81
46910		Destruction, anal lesion(s)	1.81		B		
46916		Cryosurgery, anal lesion(s)	1.81	Decrease	B		
46917		Laser surgery,anal lesion(s)	1.81		B		
46922		Excision of anal lesion(s)	1.81	Decrease	B		
46924		Destruction, anal lesion(s)	2.71		B		
46945		Ligation of hemorrhoids	3.06	1.90	1.90	Agreed	1.90
46946		Ligation of hemorrhoids	4.04	2.76	2.76	Agreed	2.76
47130		Partial removal of liver	31.56	32.16	31.56	Agreed	31.56
47425		Incision of bile duct	14.79	13.50		(a)	14.79
47600		Removal of gallbladder	10.68	11.72	10.68	Agreed	10.68
47605		Removal of gallbladder	11.53	13.16	11.53	Agreed	11.53
47610		Removal of gallbladder	13.86	15.12	15.00	Agreed	15.00
48150		Partial removal of pancreas	40.25	40.19	40.25	Agreed	40.25
49000		Exploration of abdomen	8.99	12.54	11.00	Agreed	11.00
49020		Drain abdominal abscess	9.06	17.49	CPT	(a)	9.06
49180		Biopsy, abdominal mass	1.49	2.05	1.73	Agreed	1.73
49255		Removal of omentum	4.04	12.50	10.25	Agreed	10.25
49421		Insert abdominal drain	4.89	Increase	B		
49505		Repair inguinal hernia	6.17	6.88	6.17	Agreed	6.17
49605		Repair umbilical lesion	21.92	*	21.92	Agreed	21.92
49606		Repair umbilical lesion	17.93	*	17.93	Agreed	17.93
49900		Repair of abdominal wall	4.54	12.66	9.40	Agreed	9.40
50010		Exploration of kidney	10.07	8.99	10.07	Agreed	10.07
50020		Drainage of kidney abscess	12.41	9.06	12.41	Agreed	12.41
50040		Drainage of kidney	13.80	10.55	13.80	Agreed	13.80
50081		Removal of kidney stone	20.58	16.98	20.58	Agreed	20.58

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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
50200		Biopsy of kidney	2.63	1.90	2.63	Agreed	2.63
50205		Biopsy of kidney	12.69	6.75	12.69	Decreased	10.50
50220		Removal of kidney	15.98	12.97	15.98	Agreed	15.98
50225		Removal of kidney	18.93	14.14	18.93	Agreed	18.93
50230		Removal of kidney	20.56	20.92	20.56	Agreed	20.56
50234		Removal of kidney & ureter	21.11	17.79	21.11	Agreed	21.11
50236		Removal of kidney & ureter	23.33	19.93	23.33	Agreed	23.33
50240		Partial removal of kidney	20.24	17.05	20.24	Agreed	20.24
50320		Removal of donor kidney	21.22		21.22	Agreed	21.22
50390		Drainage of kidney lesion	3.24	1.96	1.96	Agreed	1.96
50392		Insert kidney drain	5.59	2.50	3.38	Agreed	3.38
50393		Insert ureteral tube	6.88	3.50	4.16	Agreed	4.16
50395		Create passage to kidney	5.15	2.50	3.38	Agreed	3.38
50590		Fragmenting of kidney stone	9.62	6.54	9.62	Decreased	7.13
50684		Injection for ureter x-ray	0.76	0.50	0.76	Agreed	0.76
50715		Release of ureter	17.60	14.00	17.60	Agreed	17.60
51010		Drainage of bladder	2.54	1.75	2.54	Agreed	2.54
51597		Removal of pelvic structures	35.27	32.25	35.27	Agreed	35.27
51600		Injection for bladder x-ray	0.88	0.50	0.88	Agreed	0.88
51605		Preparation for bladder xray	1.13	0.64	0.64	Agreed	0.64
51610		Injection for bladder x-ray	1.59	0.90	1.05	Agreed	1.05
51700		Irrigation of bladder	0.88	0.50	0.88	Agreed	0.88
51720		Treatment of bladder lesion	1.96	1.01	1.96	Agreed	1.96
51725	26	Simple cystometrogram	1.51	1.10	1.51	Agreed	1.51
51726	26	Complex cystometrogram	1.71	1.25	1.71	Agreed	1.71
51736	26	Urine flow measurement	0.84	0.61	0.61	Agreed	0.61
51741	26	Electro-uroflowmetry, first	1.57	1.14	1.57	Decreased	1.14
51772	26	Urethra pressure profile	1.61	1.17	1.61	Agreed	1.61
51785	26	Anal/urinary muscle study	1.53	0.42	1.53	Agreed	1.53
51792	26	Urinary reflex study	1.10	0.59	1.10	Agreed	1.10
51795	26	Urine voiding pressure study	1.53	1.11	1.53	Agreed	1.53
51797	26	Intraabdominal pressure test	1.60	1.17	1.60	Agreed	1.60
52007		Cystoscopy and biopsy	3.02	2.37	3.02	Agreed	3.02
52270		Cystoscopy & revise urethra	3.84	3.37	3.37	Agreed	3.37
52275		Cystoscopy & revise urethra	4.70	4.01	4.70	Agreed	4.70
52276		Cystoscopy and treatment	3.93	3.43	5.00	Agreed	5.00
52277		Cystoscopy and treatment	6.17	3.44	6.17	Agreed	6.17
52340		Cystoscopy and treatment	7.76	5.44	CPT	(a)	7.76
52500		Revision of bladder neck	7.82	6.82	7.82	Agreed	7.82
52510		Dilation prostatic urethra	6.04	11.51	6.04	Agreed	6.04
53600		Dilate urethra stricture	1.21	2.10	CPT	(a)	1.21
53620		Dilate urethra stricture	1.62	2.43	CPT	(a)	1.62
53640		Relieve bladder retention	1.59	2.50	CPT	(a)	1.59
54050		Destruction, penis lesion(s)	1.19		B		
54055		Destruction, penis lesion(s)	1.19		B		
54056		Cryosurgery, penis lesion(s)	1.19		B		
54057		Laser surg, penis lesion(s)	1.19		B		
54060		Excision of penis lesion(s)	1.88		B		
54065		Destruction, penis lesion(s)	2.37		B		
54100		Biopsy of penis	1.90	0.86	CPT	(a)	1.90
54200		Treatment of penis lesion	1.01	Decrease	1.01	Agreed	1.01
54231		Dynamic cavernosometry	2.04	2.51	2.04	Agreed	2.04
54640		Suspension of testis	6.55	8.08	6.55	Agreed	6.55
56300		Pelvis laparoscopy, dx	3.58	4.04	CPT	(a)	3.58
56301		Laparoscopy; tubal cautery	3.68	Increase	B		
56302		Laparoscopy; tubal block	4.11	Increase	B		
56303		Laparoscopy; excise lesions	5.69	Increase	B		

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56304		Laparoscopy; lysis	4.37	Increase	B		
56305		Pelvic laparoscopy; biopsy	3.80	4.32	CPT	(a)	3.80
56307		Laparoscopy; remove adnexa	5.60	6.20	10.68	Agreed	10.68
56308		Laparoscopy; hysterectomy	13.87	Increase	B		
56309		Laparoscopy; remove myoma	5.60	7.61	13.79	Agreed	13.79
56312		Laparoscopic lymphadenectomy	12.06	Increase	12.06	Agreed	12.06
56315		Laparoscopic appendectomy	6.06	9.09	8.25	Agreed	8.25
56340		Laparoscopic cholecystectomy	10.68	11.47	10.68	Agreed	10.68
56341		Laparoscopic cholecystectomy	11.53	12.38	11.53	Agreed	11.53
56360		Peritoneoscopy	4.04	3.87	3.87	Agreed	3.87
56605		Biopsy of vulva/perineum	0.86	1.90	1.10	Agreed	1.10
56606		Biopsy of vulva/perineum	0.43	Increase	0.55	Agreed	0.55
56633		Extensive vulva surgery	12.15	Increase	15.00	Agreed	15.00
57110		Removal of vagina	13.48	20.00	13.48	Agreed	13.48
57150		Treat vagina infection	0.94	Increase	0.55	Agreed	0.55
57265		Extensive repair of vagina	7.36	10.66	7.36	Agreed	7.36
57270		Repair of bowel pouch	7.36	Increase	11.30	Agreed	11.30
57280		Suspension of vagina	8.35	Increase	14.10	Agreed	14.10
57289		Repair bladder & vagina	6.40	Increase	10.80	Agreed	10.80
57305		Repair rectum-vagina fistula	8.69	Increase	12.75	Agreed	12.75
57307		Fistula repair & colostomy	10.05	Increase	15.08	Agreed	15.08
57400		Dilation of vagina	0.83	Increase	2.27	Agreed	2.27
57410		Pelvic examination	0.59	Increase	1.75	Agreed	1.75
57415		Removal vaginal foreign body	0.91	Increase	2.12	Agreed	2.12
57540		Removal of residual cervix	6.01	Increase	11.54	Agreed	11.54
57545		Remove cervix, repair pelvis	6.63	Increase	12.30	Agreed	12.30
58120		Dilation and curettage (D&C)	2.45	Increase	2.91	Agreed	2.91
58140		Removal of uterus lesion	7.61	Increase	13.79	Agreed	13.79
58150		Total hysterectomy	13.00	Increase	14.30	Agreed	14.30
58180		Partial hysterectomy	9.06	Increase	14.30	Agreed	14.30
58200		Extensive hysterectomy	20.34	24.00	20.34	Agreed	20.34
58210		Extensive hysterectomy	23.97	Increase	27.50	Agreed	27.50
58240		Removal of pelvis contents	28.79	35.27	35.27	Agreed	35.27
58301		Remove intrauterine device	0.73	Increase	1.27	Agreed	1.27
58323		Sperm washing	0.23	Increase	0.23	Agreed	0.23
58410		Suspension of uterus	6.78	Increase	12.00	Agreed	12.00
58520		Repair of ruptured uterus	6.35	Increase	11.11	Agreed	11.11
58540		Revision of uterus	8.58	Increase	13.96	Agreed	13.96
58720		Removal of ovary/tube(s)	6.20	Increase	10.68	Agreed	10.68
58750		Repair oviduct(s)	8.82	Increase	14.26	Agreed	14.26
58752		Revise ovarian tube(s)	7.94	Increase	14.26	Agreed	14.26
58760		Remove tubal obstruction	7.16	Increase	12.50	Agreed	12.50
58770		Create new tubal opening	6.96	Increase	13.34	Agreed	13.34
58822		Drainage of ovarian abscess	6.18	Increase	9.06	Agreed	9.06
58925		Removal of ovarian cyst(s)	6.40	Increase	10.68	Agreed	10.68
58952		Resect ovarian malignancy	21.35	Increase	23.35	Agreed	23.35
58960		Exploration of abdomen	10.14	Increase	13.66	Agreed	13.66
59100		Remove uterus lesion	5.96	Increase	11.54	Agreed	11.54
59120		Treat ectopic pregnancy	7.11	Increase	10.68	Agreed	10.68
59121		Treat ectopic pregnancy	6.99	Increase	10.99	Agreed	10.99
59130		Treat ectopic pregnancy	7.88	Increase	13.49	Agreed	13.49
59136		Treat ectopic pregnancy	8.69	Increase	12.50	Agreed	12.50
59841		Abortion	3.24	Increase	4.80	Agreed	4.80
60225		Partial removal of thyroid	11.65	13.31	13.31	Agreed	13.31
60240		Removal of thyroid	15.66	16.98	15.66	Agreed	15.66
60252		Removal of thyroid	15.40	17.23	17.23	Agreed	17.23
60254		Extensive thyroid surgery	16.68	22.50	22.50	Agreed	22.50

Table 1
Five-Year Review of Work Relative Value Units

CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
61020		Remove brain cavity fluid	1.51	1.59	1.51	Agreed	1.51
61026		Injection into brain canal	1.69	1.74	1.69	Agreed	1.69
61105		Drill skull for examination	8.19	4.82	4.82	Agreed	4.82
61106		Drill skull for exam/surgery	7.35	4.62	4.62	Agreed	4.62
61107		Drill skull for implantation	4.35	5.00	5.00	Agreed	5.00
61108		Drill skull for drainage	10.80	9.00	9.00	Agreed	9.00
61120		Pierce skull for examination	9.31	8.00	8.00	Agreed	8.00
61210		Pierce skull; implant device	4.72	5.84	5.84	Agreed	5.84
61215		Insert brain-fluid device	10.05	4.00	4.00	Agreed	4.00
61250		Pierce skull & explore	11.03	9.40	9.40	Agreed	9.40
61253		Pierce skull & explore	13.00	11.27	11.27	Agreed	11.27
61312		Open skull for drainage	20.54	21.54	21.83	Agreed	21.83
61313		Open skull for drainage	20.54	22.50	22.50	Agreed	22.50
61330		Decompress eye socket	15.65	21.55	21.55	Agreed	21.55
61340		Relieve cranial pressure	11.56	17.33	17.33	Agreed	17.33
61470		Incise skull for surgery	20.79	24.60	24.60	Agreed	24.60
61480		Incise skull for surgery	16.77	25.03	25.03	Agreed	25.03
61490		Incise skull for surgery	15.63	24.20	24.20	Agreed	24.20
61510		Removal of brain lesion	23.39	24.42	26.77	Agreed	26.77
61512		Remove brain lining lesion	24.26	27.03	33.51	Agreed	33.51
61518		Removal of brain lesion	32.27	31.02	35.59	Agreed	35.59
61519		Remove brain lining lesion	33.84	39.98	39.58	Agreed	39.58
61520		Removal of brain lesion	38.35	41.16	52.98	Agreed	52.98
61521		Removal of brain lesion	39.48	42.20	42.20	Agreed	42.20
61526		Removal of brain lesion	29.71	45.00	50.59	Agreed	50.59
61531		Implant brain electrodes	20.50	23.33	12.95	Agreed	12.95
61533		Implant brain electrodes	23.41	26.64	18.05	Agreed	18.05
61536		Removal of brain lesion	29.43	33.49	33.49	Agreed	33.49
61538		Removal of brain tissue	28.05	31.92	25.09	Agreed	25.09
61539		Removal of brain tissue	30.05	34.20	30.05	Agreed	30.05
61542		Removal of brain tissue	27.39	29.05	29.05	Agreed	29.05
61543		Removal of brain tissue	20.62	30.46	27.32	Agreed	27.32
61545		Excision of brain tumor	34.50	36.70	41.76	Agreed	41.76
61546		Removal of pituitary gland	29.33	Increase	B		
61548		Removal of pituitary gland	20.15	Increase	B		
61576		Skull base/brainstem surgery	33.82	42.40	50.08	Agreed	50.08
61580		Craniofacial approach, skull	28.90	Increase	B		
61600		Resect/excise cranial lesion	24.41	Increase	B		
61680		Intracranial vessel surgery	36.45	38.20	29.13	Agreed	29.13
61682		Intracranial vessel surgery	42.21	51.32	59.47	Agreed	59.47
61684		Intracranial vessel surgery	39.25	39.96	38.23	Agreed	38.23
61686		Intracranial vessel surgery	47.45	56.51	62.08	Agreed	62.08
61690		Intracranial vessel surgery	33.82		27.80	Agreed	27.80
61692		Intracranial vessel surgery	37.96	41.92	49.74	Agreed	49.74
61700		Inner skull vessel surgery	34.83	37.45	48.30	Agreed	48.30
61702		Inner skull vessel surgery	39.20	44.50	46.31	Agreed	46.31
61720		Incise skull/brain surgery	15.85	18.73	15.92	Agreed	15.92
61735		Incise skull/brain surgery	17.08	18.72	18.72	Agreed	18.72
61750		Incise skull; brain biopsy	10.03	16.67	16.67	Agreed	16.67
61751		Brain biopsy with cat scan	15.18	18.20	16.66	Agreed	16.66
61760		Implant brain electrodes	24.83	15.80	21.00	Agreed	21.00
61770		Incise skull for treatment	15.14	19.78	19.78	Agreed	19.78
61791		Treat trigeminal tract	7.29	13.99	13.99	Agreed	13.99
61793		Focus radiation beam	16.70	19.08	17.88	Decreased	16.70
61850		Implant neuroelectrodes	15.98	9.50	11.50	Agreed	11.50
61855		Implant neuroelectrodes	12.94	10.00	12.50	Agreed	12.50
61860		Implant neuroelectrodes	11.20	12.96	19.60	Agreed	19.60

1 All CPT codes and descriptors copyright 1995 American Medical Association.

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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
61865		Implant neuroelectrodes	21.70		21.70	Agreed	21.70
61870		Implant neuroelectrodes	5.77	13.67	13.67	Agreed	13.67
61875		Implant neuroelectrodes	9.20	13.79	13.79	Agreed	13.79
61885		Implant neuroreceiver	2.35	5.28	5.28	Agreed	5.28
61888		Revise/remove neuroreceiver	3.10	4.67	4.67	Agreed	4.67
62180		Establish brain cavity shunt	12.72	15.23	19.71	Agreed	19.71
62194		Replace/irrigate catheter	2.81	4.50	4.50	Agreed	4.50
62200		Establish brain cavity shunt	13.24	18.42	17.33	Agreed	17.33
62201		Establish brain cavity shunt	12.10	15.62	13.54	Agreed	13.54
62223		Establish brain cavity shunt	12.81	13.84	11.96	Agreed	11.96
62268		Drain spinal cord cyst	3.87	4.74	4.74	Agreed	4.74
62269		Needle biopsy spinal cord	4.07	5.02	5.02	Agreed	5.02
62275		Inject spinal anesthetic	1.79	*	1.79	Agreed	1.79
62287		Percutaneous diskectomy	4.13	7.00	7.43	Agreed	7.43
62290		Inject for spine disk x-ray	3.58	2.05	3.00	Agreed	3.00
62294		Injection into spinal artery	8.05	10.95	10.95	Agreed	10.95
63005		Removal of spinal lamina	13.53	14.80	13.88	Agreed	13.88
63011		Removal of spinal lamina	11.11	13.40	13.40	Agreed	13.40
63015		Removal of spinal lamina	16.59	17.55	17.77	Agreed	17.77
63017		Removal of spinal lamina	15.85	16.86	14.90	Agreed	14.90
63020		Neck spine disk surgery	12.53		13.77	Agreed	13.77
63030		Low back disk surgery	12.11	13.90	11.10	Agreed	11.10
63042		Low back disk surgery	17.27	16.56	16.56	Agreed	16.56
63047		Removal of spinal lamina	12.76		13.57	Agreed	13.57
63057		Decompress spinal cord	3.00	4.20	5.26	Agreed	5.26
63075		Neck spine disk surgery	19.77	8.02	18.50	Agreed	18.50
63087		Removal of vertebral body	27.56	14.43	33.91	Agreed	33.91
63655		Implant neuroelectrodes	8.95	9.30	9.30	Agreed	9.30
63740		Install spinal shunt	10.43	10.37	10.37	Agreed	10.37
63741		Install spinal shunt	7.13	7.57	7.57	Agreed	7.57
63744		Revision of spinal shunt	6.83	7.34	7.34	Agreed	7.34
64443		Injection for nerve block	1.35	0.70	0.98	Agreed	0.98
64623		Injection treatment of nerve	0.99	*	0.99	Agreed	0.99
64718		Revise ulnar nerve at elbow	5.48	Increase	5.48	Agreed	5.48
64721		Carpal tunnel surgery	3.99	Increase	3.99	Agreed	3.99
64734		Incision of cheek nerve	4.62	4.50	4.50	Agreed	4.50
64736		Incision of chin nerve	4.40	4.50	4.40	Agreed	4.40
64763		Incise hip/thigh nerve	6.72		6.62	Agreed	6.62
64790		Removal of nerve lesion	10.95		B		
65101		Removal of eye	6.52	12.75	6.52	Agreed	6.52
65105		Remove eye/attach implant	7.82	12.75	CPT	(a)	7.82
65205		Remove foreign body from eye	0.78	0.55	0.71	Agreed	0.71
65430		Corneal smear	0.87	Increase	1.47	Agreed	1.47
65450		Treatment of corneal lesion	3.07	6.40	3.07	Agreed	3.07
65710		Corneal transplant	9.52	Increase	11.75	Agreed	11.75
65730		Corneal transplant	11.83	13.50	13.50	Agreed	13.50
65750		Corneal transplant	12.58	14.00	14.25	Agreed	14.25
65755		Corneal transplant	12.58	14.00	14.25	Agreed	14.25
65820		Relieve inner eye pressure	7.60	8.78	7.60	Agreed	7.60
65855		Laser surgery of eye	4.65	4.90	4.15	Agreed	4.15
66170		Glaucoma surgery	11.31		11.26	Agreed	11.26
66172		Incision of eye	13.67		13.62	Agreed	13.62
66180		Implant eye shunt	12.63	14.00	14.00	Agreed	14.00
66821		After cataract laser surgery	2.78	2.30	2.78	Decreased	2.15
66825		Reposition intraocular lens	7.73	8.25	7.73	Agreed	7.73
66830		Removal of lens lesion	7.80	6.23	7.80	Agreed	7.80
66840		Removal of lens material	7.51	6.92	7.51	Agreed	7.51

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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
66850		Removal of lens material	8.66	12.14	8.66	Agreed	8.66
66852		Removal of lens material	9.52	7.60	9.52	Agreed	9.52
66920		Extraction of lens	8.46	6.76	8.46	Agreed	8.46
66930		Extraction of lens	9.73	8.39	9.73	Agreed	9.73
66940		Extraction of lens	8.48	6.77	8.48	Agreed	8.48
66983		Remove cataract, insert lens	8.54	6.82	8.54	Agreed	8.54
66984		Remove cataract, insert lens	9.89	23.70	9.89	Agreed	9.89
66985		Insert lens prosthesis	7.89	8.25	7.89	Agreed	7.89
66986		Exchange lens prosthesis	11.78	9.41	11.78	Agreed	11.78
67005		Partial removal of eye fluid	6.63	5.50	5.50	Agreed	5.50
67015		Release of eye fluid	6.69	7.50	6.69	Agreed	6.69
67210		Treatment of retinal lesion	9.48	*	CPT	(a)	9.48
67228		Treatment of retinal lesion	12.39	Increase	B		
67312		Revise two eye muscles	7.55	9.00	8.19	Agreed	8.19
67316		Revise two eye muscles	8.02	9.50	9.26	Agreed	9.26
67420		Explore/treat eye socket	13.36	25.00	19.00	Agreed	19.00
67820		Revise eyelashes	0.89	Decrease	B		
67900		Repair brow defect	4.54	5.84	5.84	Agreed	5.84
67904		Repair eyelid defect	5.96	11.00	5.96	Agreed	5.96
67911		Revise eyelid defect	5.09	9.00	5.09	Agreed	5.09
67924		Repair eyelid defect	5.64	7.80	5.64	Agreed	5.64
67966		Revision of eyelid	6.39	14.12	6.39	Agreed	6.39
68720		Create tear sac drain	7.68	11.56	8.56	Agreed	8.56
68745		Create tear duct drain	8.23	13.60	8.23	Agreed	8.23
68750		Create tear duct drain	8.21	15.25	8.21	Agreed	8.21
68825		Explore tear duct system	1.53	2.50	CPT	(a)	1.53
68830		Reopen tear duct channel	2.12	Increase	2.12	Agreed	2.12
69100		Biopsy of external ear	0.76	0.81	0.81	Agreed	0.81
69110		Partial removal external ear	3.34	Decrease	3.34	Agreed	3.34
69150		Extensive ear canal surgery	13.01	30.00	13.01	Agreed	13.01
69155		Extensive ear/neck surgery	17.03	40.00	19.09	Agreed	19.09
69200		Clear outer ear canal	0.77	Decrease	B		
69320		Rebuild outer ear canal	16.60	30.00	16.60	Agreed	16.60
69530		Extensive mastoid surgery	18.04	32.00	18.04	Agreed	18.04
69535		Remove part of temporal bone	34.50	65.00	34.50	Agreed	34.50
69554		Remove ear lesion	25.78	50.00	31.27	Agreed	31.27
69605		Mastoid surgery revision	18.04	30.00	18.04	Agreed	18.04
69660		Revise middle ear bone	11.64	17.00	11.64	Agreed	11.64
69661		Revise middle ear bone	15.32	22.00	15.32	Agreed	15.32
69662		Revise middle ear bone	15.04	22.00	15.04	Agreed	15.04
69725		Release facial nerve	18.98	45.00	24.01	Agreed	24.01
69805		Explore inner ear	10.27	15.00	13.18	Agreed	13.18
69930		Implant cochlear device	14.00	20.00	16.13	Agreed	16.13
69950		Incise inner ear nerve	21.15	32.00	24.21	Agreed	24.21
69955		Release facial nerve	22.12	50.00	25.54	Agreed	25.54
69960		Release inner ear canal	19.75	40.00	25.54	Agreed	25.54
69970		Remove inner ear lesion	22.30	45.00	28.54	Agreed	28.54
70030	26	X-ray eye for foreign body	0.17	0.11	0.17	Agreed	0.17
70100	26	X-ray exam of jaw	0.18	0.12	0.18	Agreed	0.18
70110	26	X-ray exam of jaw	0.25	0.18	0.25	Agreed	0.25
70120	26	X-ray exam of mastoids	0.18	0.12	0.18	Agreed	0.18
70130	26	X-ray exam of mastoids	0.34	0.27	0.34	Agreed	0.34
70140	26	X-ray exam of facial bones	0.19	0.13	0.19	Agreed	0.19
70150	26	X-ray exam of facial bones	0.26	0.20	0.26	Agreed	0.26
70160	26	X-ray exam of nasal bones	0.17	0.11	0.17	Agreed	0.17
70170	26	X-ray exam of tear duct	0.30	0.20	0.30	Agreed	0.30
70210	26	X-ray exam of sinuses	0.17	0.11	0.17	Agreed	0.17

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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
70220	26	X-ray exam of sinuses	0.25	0.19	0.25	Agreed	0.25
70250	26	X-ray exam of skull	0.24	0.18	0.24	Agreed	0.24
70260	26	X-ray exam of skull	0.34	0.28	0.34	Agreed	0.34
70300	26	X-ray exam of teeth	0.10	0.08	0.10	Agreed	0.10
70310	26	X-ray exam of teeth	0.16	0.10	0.16	Agreed	0.16
70320	26	Full mouth x-ray of teeth	0.22	0.16	0.22	Agreed	0.22
70328	26	X-ray exam of jaw joint	0.18	0.12	0.18	Agreed	0.18
70330	26	X-ray exam of jaw joints	0.24	0.18	0.24	Agreed	0.24
70332	26	X-ray exam of jaw joint	0.54	0.18	0.54	Agreed	0.54
70336	26	Magnetic image jaw joint	0.95	1.48	1.48	Agreed	1.48
70350	26	X-ray head for orthodontia	0.17	0.11	0.17	Agreed	0.17
70355	26	Panoramic x-ray of jaws	0.20	0.14	0.20	Agreed	0.20
70360	26	X-ray exam of neck	0.17	0.11	0.17	Agreed	0.17
70380	26	X-ray exam of salivary gland	0.17	0.11	0.17	Agreed	0.17
70390	26	X-ray exam of salivary duct	0.38	0.26	0.38	Agreed	0.38
70450	26	CAT scan of head or brain	0.85	1.09	0.85	Agreed	0.85
70460	26	Contrast CAT scan of head	1.13	1.09	1.13	Agreed	1.13
70470	26	Contrast CAT scans of head	1.27	1.21	1.27	Agreed	1.27
70480	26	CAT scan of skull	1.28	1.09	1.28	Agreed	1.28
70481	26	Contrast CAT scan of skull	1.38	1.09	1.38	Agreed	1.38
70482	26	Contrast CAT scans of skull	1.45	1.21	1.45	Agreed	1.45
70486	26	CAT scan of face, jaw	1.14	1.09	1.14	Agreed	1.14
70487	26	Contrast CAT scan, face/jaw	1.30	1.09	1.30	Agreed	1.30
70488	26	Contrast CAT scans face/jaw	1.42	1.21	1.42	Agreed	1.42
70490	26	CAT scan of neck tissue	1.28	1.09	1.28	Agreed	1.28
70491	26	Contrast CAT of neck tissue	1.38	1.09	1.38	Agreed	1.38
70492	26	Contrast CAT of neck tissue	1.45	1.21	1.45	Agreed	1.45
70540	26	Magnetic image, face, neck	1.48	1.48	1.48	Agreed	1.48
70551	26	Magnetic image, brain (MRI)	1.48	1.48	1.48	Agreed	1.48
70552	26	Magnetic image, brain (MRI)	1.78	1.48	1.78	Agreed	1.78
70553	26	Magnetic image, brain	2.36	2.06	2.36	Agreed	2.36
71010	26	Chest x-ray	0.18	0.12	0.18	Agreed	0.18
71015	26	X-ray exam of chest	0.21	0.15	0.21	Agreed	0.21
71020	26	Chest x-ray	0.22	0.16	0.22	Agreed	0.22
71021	26	Chest x-ray	0.27	0.21	0.27	Agreed	0.27
71022	26	Chest x-ray	0.31	0.25	0.31	Agreed	0.31
71035	26	Chest x-ray	0.18	0.12	0.18	Agreed	0.18
71040	26	Contrast x-ray of bronchi	0.58	0.22	0.58	Agreed	0.58
71060	26	Contrast x-ray of bronchi	0.74	0.22	0.74	Agreed	0.74
71100	26	X-ray exam of ribs	0.22	0.12	0.22	Agreed	0.22
71101	26	X-ray exam of ribs, chest	0.27	0.16	0.27	Agreed	0.27
71110	26	X-ray exam of ribs	0.27	0.18	0.27	Agreed	0.27
71111	26	X-ray exam of ribs, chest	0.32	0.26	0.32	Agreed	0.32
71120	26	X-ray exam of breastbone	0.20	0.12	0.20	Agreed	0.20
71130	26	X-ray exam of breastbone	0.22	0.16	0.22	Agreed	0.22
71250	26	Cat scan of chest	1.16	1.09	1.16	Agreed	1.16
71260	26	Contrast CAT scan of chest	1.24	1.09	1.24	Agreed	1.24
71270	26	Contrast CAT scans of chest	1.38	1.21	1.38	Agreed	1.38
71550	26	Magnetic image, chest	1.60	1.48	1.60	Agreed	1.60
72020	26	X-ray exam of spine	0.15	0.10	0.15	Agreed	0.15
72040	26	X-ray exam of neck spine	0.22	0.16	0.22	Agreed	0.22
72050	26	X-ray exam of neck spine	0.31	0.25	0.31	Agreed	0.31
72069	26	X-ray exam of trunk spine	0.22	0.16	0.22	Agreed	0.22
72070	26	X-ray exam of thorax spine	0.22	0.16	0.22	Agreed	0.22
72072	26	X-ray exam of thoracic spine	0.22	0.16	0.22	Agreed	0.22
72074	26	X-ray exam of thoracic spine	0.22	0.16	0.22	Agreed	0.22
72080	26	X-ray exam of trunk spine	0.22	0.16	0.22	Agreed	0.22

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72090	26	X-ray exam of trunk spine	0.28	0.22	0.28	Agreed	0.28
72100	26	X-ray exam of lower spine	0.22	0.16	0.22	Agreed	0.22
72110	26	X-ray exam of lower spine	0.31	0.25	0.31	Agreed	0.31
72114	26	X-ray exam of lower spine	0.36	0.33	0.36	Agreed	0.36
72120	26	X-ray exam of lower spine	0.22	0.16	0.22	Agreed	0.22
72125	26	CAT scan of neck spine	1.16	1.09	1.16	Agreed	1.16
72126	26	Contrast CAT scan of neck	1.22	1.09	1.22	Agreed	1.22
72127	26	Contrast CAT scans of neck	1.27	1.21	1.27	Agreed	1.27
72128	26	CAT scan of thorax spine	1.16	1.09	1.16	Agreed	1.16
72129	26	Contrast CAT scan of thorax	1.22	1.09	1.22	Agreed	1.22
72130	26	Contrast CAT scans of thorax	1.27	1.21	1.27	Agreed	1.27
72131	26	CAT scan of lower spine	1.16	1.09	1.16	Agreed	1.16
72132	26	Contrast CAT of lower spine	1.22	1.09	1.22	Agreed	1.22
72133	26	Contrast CAT scans,low spine	1.27	1.21	1.27	Agreed	1.27
72141	26	Magnetic image, neck spine	1.60	1.48	1.60	Agreed	1.60
72142	26	Magnetic image, neck spine	1.92	1.48	1.92	Agreed	1.92
72146	26	Magnetic image, chest spine	1.60	1.48	1.60	Agreed	1.60
72147	26	Magnetic image, chest spine	1.92	1.48	1.92	Agreed	1.92
72148	26	Magnetic image, lumbar spine	1.48	1.48	1.48	Agreed	1.48
72149	26	Magnetic image, lumbar spine	1.78	1.48	1.78	Agreed	1.78
72156	26	Magnetic image, neck spine	2.57	1.48	2.57	Agreed	2.57
72157	26	Magnetic image, chest spine	2.57	1.48	2.57	Agreed	2.57
72158	26	Magnetic image, lumbar spine	2.36	1.48	2.36	Agreed	2.36
72170	26	X-ray exam of pelvis	0.17	0.11	0.17	Agreed	0.17
72190	26	X-ray exam of pelvis	0.21	0.15	0.21	Agreed	0.21
72192	26	CAT scan of pelvis	1.09	1.09	1.09	Agreed	1.09
72193	26	Contrast CAT scan of pelvis	1.16	1.09	1.16	Agreed	1.16
72194	26	Contrast CAT scans of pelvis	1.22	1.21	1.22	Agreed	1.22
72196	26	Magnetic image, pelvis	1.60	1.48	1.60	Agreed	1.60
72200	26	X-ray exam sacroiliac joints	0.17	0.11	0.17	Agreed	0.17
72202	26	X-ray exam sacroiliac joints	0.19	0.13	0.19	Agreed	0.19
72220	26	X-ray exam of tailbone	0.17	0.11	0.17	Agreed	0.17
72265	26	Contrast x-ray lower spine	0.83	0.22	0.83	Agreed	0.83
73000	26	X-ray exam of collarbone	0.16	0.10	0.16	Agreed	0.16
73010	26	X-ray exam of shoulder blade	0.17	0.11	0.17	Agreed	0.17
73020	26	X-ray exam of shoulder	0.15	0.10	0.15	Agreed	0.15
73030	26	X-ray exam of shoulder	0.18	0.12	0.18	Agreed	0.18
73040	26	Contrast x-ray of shoulder	0.54	0.15	0.54	Agreed	0.54
73050	26	X-ray exam of shoulders	0.20	0.14	0.20	Agreed	0.20
73060	26	X-ray exam of humerus	0.17	0.11	0.17	Agreed	0.17
73070	26	X-ray exam of elbow	0.15	0.10	0.15	Agreed	0.15
73080	26	X-ray exam of elbow	0.17	0.11	0.17	Agreed	0.17
73085	26	Contrast x-ray of elbow	0.54	0.15	0.54	Agreed	0.54
73090	26	X-ray exam of forearm	0.16	0.10	0.16	Agreed	0.16
73092	26	X-ray exam of arm, infant	0.16	0.10	0.16	Agreed	0.16
73100	26	X-ray exam of wrist	0.16	0.10	0.16	Agreed	0.16
73110	26	X-ray exam of wrist	0.17	0.11	0.17	Agreed	0.17
73115	26	Contrast x-ray of wrist	0.54	0.16	0.54	Agreed	0.54
73120	26	X-ray exam of hand	0.16	0.10	0.16	Agreed	0.16
73130	26	X-ray exam of hand	0.17	0.11	0.17	Agreed	0.17
73140	26	X-ray exam of finger(s)	0.13	0.09	0.13	Agreed	0.13
73200	26	CAT scan of arm	1.09	1.09	1.09	Agreed	1.09
73201	26	Contrast CAT scan of arm	1.16	1.09	1.16	Agreed	1.16
73202	26	Contrast CAT scans of arm	1.22	1.21	1.22	Agreed	1.22
73220	26	Magnetic image, arm, hand	1.48	1.48	1.48	Agreed	1.48
73221	26	Magnetic image, joint of arm	0.95	1.48	1.48	Agreed	1.48
73225	26	Magnetic imaging/upper (MRA)	1.73	1.48	1.73	Agreed	1.73

Table 1
Five-Year Review of Work Relative Value Units

CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
73500	26	X-ray exam of hip	0.17	0.11	0.17	Agreed	0.17
73510	26	X-ray exam of hip	0.21	0.15	0.21	Agreed	0.21
73520	26	X-ray exam of hips	0.26	0.20	0.26	Agreed	0.26
73525	26	Contrast x-ray of hip	0.54	0.17	0.54	Agreed	0.54
73530	26	X-ray exam of hip	0.29	0.21	0.29	Agreed	0.29
73540	26	X-ray exam of pelvis & hips	0.20	0.14	0.20	Agreed	0.20
73550	26	X-ray exam of thigh	0.17	0.11	0.17	Agreed	0.17
73560	26	X-ray exam of knee	0.17	0.11	0.17	Agreed	0.17
73562	26	X-ray exam of knee	0.18	0.12	0.18	Agreed	0.18
73564	26	X-ray exam of knee	0.22	0.16	0.22	Agreed	0.22
73565	26	X-ray exam of knee	0.17	0.11	0.17	Agreed	0.17
73580	26	Contrast x-ray of knee joint	0.54	0.17	0.54	Agreed	0.54
73590	26	X-ray exam of lower leg	0.17	0.11	0.17	Agreed	0.17
73592	26	X-ray exam of leg, infant	0.16	0.10	0.16	Agreed	0.16
73600	26	X-ray exam of ankle	0.16	0.10	0.16	Agreed	0.16
73610	26	X-ray exam of ankle	0.17	0.11	0.17	Agreed	0.17
73615	26	Contrast x-ray of ankle	0.54	0.16	0.54	Agreed	0.54
73620	26	X-ray exam of foot	0.16	0.10	0.16	Agreed	0.16
73630	26	X-ray exam of foot	0.17	0.11	0.17	Agreed	0.17
73650	26	X-ray exam of heel	0.16	0.10	0.16	Agreed	0.16
73660	26	X-ray exam of toe(s)	0.13	0.09	0.13	Agreed	0.13
73700	26	CAT scan of leg	1.09	1.09	1.09	Agreed	1.09
73701	26	Contrast CAT scan of leg	1.16	1.09	1.16	Agreed	1.16
73702	26	Contrast CAT scans of leg	1.22	1.21	1.22	Agreed	1.22
73720	26	Magnetic image, leg, foot	1.48	1.48	1.48	Agreed	1.48
73721	26	Magnetic image, joint of leg	0.95	1.48	1.48	Agreed	1.48
74000	26	X-ray exam of abdomen	0.18	0.12	0.18	Agreed	0.18
74010	26	X-ray exam of abdomen	0.23	0.17	0.23	Agreed	0.23
74020	26	X-ray exam of abdomen	0.27	0.21	0.27	Agreed	0.27
74022	26	X-ray exam series, abdomen	0.32	0.26	0.32	Agreed	0.32
74150	26	CAT scan of abdomen	1.19	1.09	1.19	Agreed	1.19
74160	26	Contrast CAT scan of abdomen	1.27	1.09	1.27	Agreed	1.27
74170	26	Contrast CAT scans, abdomen	1.40	1.21	1.40	Agreed	1.40
74181	26	Magnetic image, abdomen (MRI	1.60	1.48	1.60	Agreed	1.60
74330	26	Xray,bile/pancreas endoscopy	0.70	1.05	0.90	Agreed	0.90
74360	26	X-ray guide, GI dilation	0.54	*	0.54	Agreed	0.54
74710	26	X-ray measurement of pelvis	0.34	0.28	0.34	Agreed	0.34
75552	26	Magnetic image, myocardium	1.60	1.48	1.60	Agreed	1.60
75553	26	Magnetic image, myocardium	2.00	1.48	2.00	Agreed	2.00
75554	26	Cardiac MRI/function	1.83	1.48	1.83	Agreed	1.83
75555	26	Cardiac MRI/limited study	1.74	1.48	1.74	Agreed	1.74
75556		Cardiac MRI/flow mapping	0.00	1.48	0.00	Agreed	0.00
75630	26	X-ray aorta, leg arteries	1.31	2.45	1.79	Agreed	1.79
76066	26	Joint(s) survey, single film	0.31	0.25	0.31	Agreed	0.31
76090	26	Mammogram, one breast	0.25	0.65	0.58	Agreed	0.58
76091	26	Mammogram, both breasts	0.41	0.80	0.69	Agreed	0.69
76092		Mammogram, screening	0.00	0.55	Z		
76093	26	Magnetic image, breast	1.63	1.48	1.63	Agreed	1.63
76094	26	Magnetic image, both breasts	1.63	1.48	1.63	Agreed	1.63
76098	26	X-ray exam, breast specimen	0.16	0.10	0.16	Agreed	0.16
76355	26	CAT scan for localization	1.21	1.09	1.21	Agreed	1.21
76360	26	CAT scan for needle biopsy	1.16	1.09	1.16	Agreed	1.16
76365	26	CAT scan for cyst aspiration	1.16	1.09	1.16	Agreed	1.16
76370	26	CAT scan for therapy guide	0.85	1.09	0.85	Agreed	0.85
76375	26	CAT scans, other planes	0.16	1.09	0.16	Agreed	0.16
76380	26	CAT scan follow-up study	0.98	1.09	0.98	Agreed	0.98
76400	26	Magnetic image, bone marrow	1.60	1.48	1.60	Agreed	1.60

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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
76536	26	Echo exam of head and neck	0.56	Increase	D		
76645	26	Echo exam of breast	0.54	Increase	D		
76700	26	Echo exam of abdomen	0.81	Increase	D		
76705	26	Echo exam of abdomen	0.59	Increase	D		
76770	26	Echo exam abdomen back wall	0.74	Increase	D		
76778	26	Echo exam kidney transplant	0.74	Increase	D		
76805	26	Echo exam of pregnant uterus	0.99	Increase	D		
76815	26	Echo exam of pregnant uterus	0.65	Increase	D		
76825	26	Echo exam of fetal heart	0.98	1.67	1.67	Agreed	1.67
76830	26	Echo exam, transvaginal	0.69	Increase	D		
76856	26	Echo exam of pelvis	0.69	Increase	D		
76870	26	Echo exam of scrotum	0.64	Increase	D		
76872	26	Echo exam, transrectal	0.69	Increase	D		
76880	26	Echo exam of extremity	0.59	Increase	D		
77420		Weekly radiation therapy	1.61	*	POS		1.61
77425		Weekly radiation therapy	2.44	*	POS		2.44
77430		Weekly radiation therapy	3.60	*	POS		3.60
77761	26	Radioelement application	3.56	*	3.56	Agreed	3.56
78070	26	Parathyroid nuclear imaging	0.51	1.00	0.82	Agreed	0.82
78075	26	Adrenal nuclear imaging	0.74	0.83	0.74	Agreed	0.74
78195	26	Lymph system imaging	0.70	2.00	1.20	Agreed	1.20
78480	26	Heart function, (add-on)	0.62	Decrease	CPT	(a)	0.62
78608		Brain imaging (PET)	0.00	Increase	Z		
78609		Brain imaging (PET)	0.00	Increase	Z		
78635	26	CSF ventriculography	0.61	0.70	0.61	Agreed	0.61
78803	26	Tumor imaging (3D)	1.09	*	1.09	Agreed	1.09
78805	26	Abscess imaging, ltd area	0.73		0.73	Agreed	0.73
78806	26	Abscess imaging, whole body	0.73		0.73	Agreed	0.73
83020	26	Assay hemoglobin	0.37	0.16	0.37	Agreed	0.37
83912	26	Genetic examination	0.37	0.30	0.37	Agreed	0.37
84165	26	Assay serum proteins	0.37	0.16	0.37	Agreed	0.37
84181	26	Western blot test	0.37	0.16	0.37	Agreed	0.37
84182	26	Protein, western blot test	0.37	0.16	0.37	Agreed	0.37
85095		Bone marrow aspiration	1.08	Increase	1.08	Agreed	1.08
85102		Bone marrow biopsy	1.37	Increase	1.37	Agreed	1.37
85390	26	Fibrinolysins screen	0.37	1.19	0.75	Decreased	0.37
85576	26	Blood platelet aggregation	0.37	0.16	0.37	Agreed	0.37
86077		Physician blood bank service	0.37	0.94	0.94	Agreed	0.94
86079		Physician blood bank service	0.37	0.94	0.94	Agreed	0.94
86255	26	Fluorescent antibody; screen	0.37	0.16	0.37	Agreed	0.37
86256	26	Fluorescent antibody; titer	0.37	0.16	0.37	Agreed	0.37
86320	26	Serum immunoelectrophoresis	0.37	0.17	0.37	Agreed	0.37
86325	26	Other immunoelectrophoresis	0.37	0.17	0.37	Agreed	0.37
86327	26	Immunoelectrophoresis assay	0.37	0.18	0.45	Decreased	0.37
86334	26	Immunofixation procedure	0.37	0.18	0.37	Agreed	0.37
88150		Cytopathology, pap smear	0.00	0.60	Z		
88151	26	Cytopathology interpretation	0.42		B		
88170	26	Fine needle aspiration	0.50	1.35	1.27	Agreed	1.27
88171	26	Fine needle aspiration	1.05	1.54	1.27	Agreed	1.27
88172	26	Evaluation of smear	0.60	0.56	0.60	Agreed	0.60
88173	26	Interpretation of smear	1.08	1.60	1.08	Agreed	1.08
88180	26	Cell marker study	0.36	0.16	0.36	Agreed	0.36
88182	26	Cell marker study	0.77	0.34	0.77	Agreed	0.77
88305	26	Tissue exam by pathologist	0.75	Increase	B		
88311	26	Decalcify tissue	0.24	0.00	0.24	Agreed	0.24
88321		Microslide consultation	1.30	Increase	B		
88331	26	Pathology consult in surgery	1.19	Increase	B		

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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs	
88332	26	Pathology consult in surgery	0.59	Increase	B			
88348	26	Electron microscopy	1.51	Increase	B			
89060	26	Exam,synovial fluid crystals	0.37	0.16	0.37	Agreed	0.37	
90780		IV infusion therapy, 1 hour	0.00	1.10	Z			
90781		IV infusion, additional hour	0.00	0.70	Z			
90801		Psychiatric interview	2.19	3.23	2.80	Decreased	2.21	[3]
90820		Diagnostic interview	2.25	3.75	2.25	Agreed	2.27	[3]
90825		Evaluation of tests/records	0.97	1.67	0.97	Agreed	0.97	
90835		Special interview	2.82	5.37	2.82	Agreed	2.84	[3]
90842		Psychotherapy, 75-80 min	2.74	3.64	2.74	Agreed	2.76	[3]
90843		Psychotherapy 20-30 min.	1.10	1.46	1.47	Decreased	1.11	[3]
90844		Psychotherapy 45-50 min.	1.72	2.29	2.00	Decreased	1.73	[3]
90845		Medical psychoanalysis	1.78	2.37	1.78	Agreed	1.79	[3]
90846		Special family therapy	1.82	2.42	1.82	Agreed	1.83	[3]
90847		Special family therapy	2.19	2.91	2.19	Agreed	2.21	[3]
90853		Special group therapy	0.43	0.57	0.59	Decreased	0.43	
90855		Individual psychotherapy	1.81	2.40	2.15	Decreased	1.82	[3]
90857		Special group therapy	0.43	0.57	0.43	Agreed	0.43	
90862		Medication management	0.95	1.40	0.95	Agreed	0.95	
90870		Electroconvulsive therapy	1.88	2.58	1.88	Agreed	1.88	
90871		Electroconvulsive therapy	2.72	3.52	2.72	Agreed	2.72	
90880		Medical hypnotherapy	2.19	1.76	2.19	Agreed	2.19	
90887		Consultation with family	1.48	2.56	1.48	Agreed	1.48	
90900		Biofeedback, electromyogram	0.89	0.43	0.89	Agreed	0.89	
90902		Biofeedback, nerve impulse	0.89	0.43	0.43	Agreed	0.43	
90904		Biofeedback, blood pressure	0.89	0.43	0.43	Agreed	0.43	
90906		Biofeedback, blood flow	0.89	0.43	0.43	Agreed	0.43	
90908		Biofeedback, brain waves	0.89	0.43	0.43	Agreed	0.43	
90910		Biofeedback, oculogram	0.89	0.43	0.43	Agreed	0.43	
90911		Anorectal biofeedback	2.15	0.93	2.15	Decreased	0.89	
90915		Biofeedback, unspecified	0.89	0.43	0.89	Agreed	0.89	
91000	26	Esophageal intubation	0.99	0.73	0.73	Agreed	0.73	
91010	26	Esophagus motility study	1.65	3.90	1.25	Agreed	1.25	
91011	26	Esophagus motility study	1.98	1.50	1.50	Agreed	1.50	
91012	26	Esophagus motility study	1.92	1.46	1.46	Agreed	1.46	
91020	26	Esophagogastric study	1.89	1.44	1.44	Agreed	1.44	
91030	26	Acid perfusion of esophagus	1.20	0.91	0.91	Agreed	0.91	
91032	26	Esophagus, acid reflux test	1.59	1.21	1.21	Agreed	1.21	
91033	26	Prolonged acid reflux test	1.71	4.68	1.30	Agreed	1.30	
91052	26	Gastric analysis test	1.71	0.79	0.79	Agreed	0.79	
91055	26	Gastric intubation for smear	1.28	0.94	0.94	Agreed	0.94	
91065	26	Breath hydrogen test	0.45	0.20	0.20	Agreed	0.20	
91122	26	Anal pressure record	1.77	0.66	1.77	Agreed	1.77	
92002		Eye exam, new patient	1.01	0.75	0.79	Increased	0.88	
92004		Eye exam, new patient	1.61	1.71	1.50	Decreased	1.34	
92012		Eye exam established pt	0.82	0.55	0.80	Decreased	0.67	
92014		Eye exam & treatment	1.06	0.94	1.27	Decreased	1.10	
92018		New eye exam & treatment	1.51	0.88	1.51	Agreed	1.51	
92019		Eye exam & treatment	1.31	0.38	1.31	Agreed	1.31	
92020		Special eye evaluation	0.37	0.16	0.37	Agreed	0.37	
92060	26	Special eye evaluation	0.50	0.23	0.69	Agreed	0.69	
92065	26	Orthoptic/pleoptic training	0.37	Increase	0.37	Agreed	0.37	
92070		Fitting of contact lens	0.70	1.05	0.70	Agreed	0.70	
92225		Special eye exam, initial	0.58	1.73	CPT	(a)	0.58	
92226		Special eye exam, subsequent	0.50	0.33	CPT	(a)	0.50	
92235	26	Eye exam with photos	0.81	1.12	B			

1 All CPT codes and descriptors copyright 1995 American Medical Association.

3 RVUs were modified due to a policy change implemented in 1996.

Table 1
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CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
92260		Ophthalmoscopy/dynamometry	0.50	0.20	CPT	(a)	0.50
92275	26	Electroretinography	1.01	0.40	1.01	Agreed	1.01
92283	26	Color vision examination	0.26	0.17	0.17	Agreed	0.17
92284	26	Dark adaptation eye exam	0.37	0.24	0.24	Agreed	0.24
92506		Speech & hearing evaluation	0.86	Increase	0.86	Agreed	0.86
92507		Speech/hearing therapy	0.52	Increase	0.52	Agreed	0.52
92508		Speech/hearing therapy	0.26	Increase	0.26	Agreed	0.26
92512		Nasal function studies	0.55	0.31	0.55	Agreed	0.55
92541	26	Spontaneous nystagmus test	0.40	1.40	0.40	Agreed	0.40
92542	26	Positional nystagmus test	0.33	0.80	0.33	Agreed	0.33
92543	26	Caloric vestibular test	0.38	0.80	0.38	Agreed	0.38
92544	26	Optokinetic nystagmus test	0.26	Increase	0.26	Agreed	0.26
92545	26	Oscillating tracking test	0.23	1.40	0.23	Agreed	0.23
92546	26	Torsion swing recording	0.29	Increase	0.29	Agreed	0.29
92547		Supplemental electrical test	0.00	Increase	Z		
92551		Pure tone hearing test, air	0.00	0.40	Z		
92552		Pure tone audiometry, air	0.00	0.40	Z		
92553		Audiometry, air & bone	0.00	0.80	Z		
92555		Speech threshold audiometry	0.00	0.40	Z		
92556		Speech audiometry, complete	0.00	0.80	Z		
92557		Comprehensive hearing test	0.00	1.70	Z		
92561		Bekesy audiometry, diagnosis	0.00	Increase	Z		
92562		Loudness balance test	0.00	Increase	Z		
92563		Tone decay hearing test	0.00	0.60	Z		
92564		Sisi hearing test	0.00	0.60	Z		
92565		Stenger test, pure tone	0.00	0.40	Z		
92567		Tympanometry	0.00	0.40	Z		
92568		Acoustic reflex testing	0.00	0.40	Z		
92569		Acoustic reflex decay test	0.00	0.40	Z		
92571		Filtered speech hearing test	0.00	0.60	Z		
92572		Staggered spondaic word test	0.00	0.90	Z		
92573		Lombard test	0.00	Increase	Z		
92575		Sensorineural acuity test	0.00	Increase	Z		
92576		Synthetic sentence test	0.00	Increase	Z		
92577		Stenger test, speech	0.00	0.40	Z		
92582		Conditioning play audiometry	0.00	1.40	Z		
92583		Select picture audiometry	0.00	0.90	Z		
92584		Electrocochleography	0.00	2.70	Z		
92585	26	Brainstem evoked audiometry	0.50	3.90	0.50	Agreed	0.50
92589		Auditory function test(s)	0.00	3.80	Z		
92594		Electro hearing aid test,one	0.00	1.40	Z		
92595		Electro hearingaid test,both	0.00	2.50	Z		
92596		Ear protector evaluation	0.00	0.90	Z		
92977		Dissolve clot, heart vessel	0.00	Increase	Z		
93000		Electrocardiogram, complete	0.17	0.05	0.17	Agreed	0.17
93010		Electrocardiogram report	0.17	0.05	0.17	Agreed	0.17
93225		ECG monitor/record, 24 hrs	0.00		Z		
93278	26	ECG/signal-averaged	0.35	0.16	0.25	Agreed	0.25
93307	26	Echo exam of heart	0.78	1.67	1.06	Decreased	0.78
93312	26	Echo exam of heart	1.57	2.39	2.39	Decreased	1.90
93320	26	Doppler echo exam, heart	0.38	0.57	0.38	Agreed	0.38
93325	26	Doppler color flow	0.07		B		
93503		Insert/place heart catheter	2.43	3.67	2.43	Agreed	2.43
93505	26	Biopsy of heart lining	4.56	4.38	4.38	Agreed	4.38
93510	26	Left heart catheterization	4.33	*	4.33	Agreed	4.33
93526	26	Rt & Lt heart catheters	5.99	*	5.99	Agreed	5.99

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93527	26	Rt & Lt heart catheters	7.28	8.56	7.28	Agreed	7.28
93529	26	Rt, Lt heart catheterization	4.80	7.28	4.80	Agreed	4.80
93539		Injection, cardiac cath	0.29	0.40	0.40	Agreed	0.40
93544		Injection for aortography	0.29	0.23	0.25	Agreed	0.25
93545		Injection for coronary xrays	0.29	0.35	0.40	Agreed	0.40
93561	26	Cardiac output measurement	1.15	0.50	0.50	Agreed	0.50
93562	26	Cardiac output measurement	0.37	0.16	0.16	Agreed	0.16
93621	26	Electrophysiology evaluation	12.66	CPT	CPT	(a)	12.66
93641	26	Electrophysiology evaluation	5.93	8.60	5.93	Agreed	5.93
93660	26	Tilt table evaluation	1.89		B		
93733	26	Telephone analysis,pacemaker	0.17		0.17	Agreed	0.17
93875	26	Extracranial study	0.22	0.38	0.22	Agreed	0.22
93880	26	Extracranial study	0.60	0.79	0.60	Agreed	0.60
93882	26	Extracranial study	0.40	0.59	0.40	Agreed	0.40
93922	26	Extremity study	0.25	0.38	0.25	Agreed	0.25
93923	26	Extremity study	0.45	0.79	0.45	Agreed	0.45
93924	26	Extremity study	0.50	1.17	0.50	Agreed	0.50
93925	26	Lower extremity study	0.58	0.79	0.58	Agreed	0.58
93926	26	Lower extremity study	0.39	0.59	0.39	Agreed	0.39
93930	26	Upper extremity study	0.46	0.79	0.46	Agreed	0.46
93931	26	Upper extremity study	0.31	0.59	0.31	Agreed	0.31
93965	26	Extremity study	0.35	0.79	0.35	Agreed	0.35
93970	26	Extremity study	0.68	0.79	0.68	Agreed	0.68
93971	26	Extremity study	0.45	0.59	0.45	Agreed	0.45
93980	26	Penile vascular study	1.82	1.25	1.25	Agreed	1.25
93981	26	Penile vascular study	0.64	0.44	0.44	Agreed	0.44
94060	26	Evaluation of wheezing	0.31	0.31	0.31	Agreed	0.31
94150	26	Vital capacity test	0.11	0.07	CPT	(a)	0.11
94160	26	Vital capacity screening	0.18	0.11	0.18	Agreed	0.18
94240	26	Residual lung capacity	0.26	0.16	0.26	Agreed	0.26
94350	26	Lung nitrogen washout curve	0.26	0.16	0.26	Agreed	0.26
94360	26	Measure airflow resistance	0.26	0.16	0.26	Agreed	0.26
94375	26	Respiratory flow volume loop	0.31	0.19	0.31	Agreed	0.31
94400	26	CO2 breathing response curve	0.40	*	0.40	Agreed	0.40
94720	26	Monoxide diffusing capacity	0.26	0.16	0.26	Agreed	0.26
94725	26	Membrane diffusion capacity	0.26	0.16	0.26	Agreed	0.26
94770	26	Exhaled carbon dioxide test	0.20	0.11	0.15	Agreed	0.15
95004		Allergy skin tests	0.00	0.01	Z		
95010		Sensitivity skin tests	0.15	0.07	0.15	Agreed	0.15
95015		Sensitivity skin tests	0.15	0.07	0.15	Agreed	0.15
95024		Allergy skin tests	0.00	0.03	Z		
95028		Allergy skin tests	0.00	Increase	Z		
95075		Ingestion challenge test	0.95	0.60	0.95	Agreed	0.95
95115		Immunotherapy, one injection	0.00	0.17	Z		
95117		Immunotherapy injections	0.00	0.17	Z		
95807	26	Sleep study	1.66	1.66	C		
95808	26	Polysomnography, 1-3	2.65	2.65	C		
95810	26	Polysomnography, 4 or more	3.53	3.53	C		
95851		Range of motion measurements	0.28	0.16	0.16	Agreed	0.16
95852		Range of motion measurements	0.19	0.11	0.11	Agreed	0.11
95867	26	Muscle test, head or neck	0.62	0.79	0.79	Agreed	0.79
95868	26	Muscle test, head or neck	1.50	1.18	1.18	Agreed	1.18
95872	26	Muscle test, one fiber	1.50	2.00	CPT	(a)	1.50
95937	26	Neuromuscular junction test	0.60	0.51	0.65	Agreed	0.65
95951	26	EEG monitoring/videorecord	3.80	6.75	6.00	Agreed	6.00
96400		Chemotherapy, (SC)/(IM)	0.00	1.80	Z		

Table 1
Five-Year Review of Work Relative Value Units

CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
96405		Intralesional chemo admin	0.52	1.20	0.52	Agreed	0.52
96406		Intralesional chemo admin	0.80	1.09	0.80	Agreed	0.80
96408		Chemotherapy, push technique	0.00	1.21	Z		
96410		Chemotherapy,infusion method	0.00	1.81	Z		
96412		Chemotherapy,infusion method	0.00	1.43	Z		
96414		Chemotherapy,infusion method	0.00	1.50	Z		
96420		Chemotherapy, push technique	0.00	1.00	Z		
96422		Chemotherapy,infusion method	0.00	1.40	Z		
96423		Chemotherapy,infusion method	0.00	0.70	Z		
96425		Chemotherapy,infusion method	0.00	1.70	Z		
96440		Chemotherapy, intracavitary	2.37	3.40	2.37	Agreed	2.37
96445		Chemotherapy, intracavitary	2.20	3.22	2.20	Agreed	2.20
96450		Chemotherapy, into CNS	1.89	2.91	1.89	Agreed	1.89
96910		Photochemotherapy with UV-B	0.00	0.75	Z		
96912		Photochemotherapy with UV-A	0.00	0.75	Z		
97250		Myofascial release	0.45	0.19	CPT	(a)	0.45
97260		Regional manipulation	0.19		CPT	(a)	0.19
97261		Supplemental manipulations	0.12		CPT	(a)	0.12
97500		Orthotics training	0.31	Increase	CPT	(a)	0.31
97501		Supplemental training	0.17	Increase	CPT	(a)	0.17
97520		Prosthetic training	0.37	Increase	CPT	(a)	0.37
97521		Supplemental training	0.22	Increase	CPT	(a)	0.22
98925		Osteopathic manipulation	0.45	0.45	0.45	Agreed	0.45
98926		Osteopathic manipulation	0.65	0.65	0.65	Agreed	0.65
98927		Osteopathic manipulation	0.87	0.87	0.87	Agreed	0.87
98928		Osteopathic manipulation	1.03	0.87	1.03	Agreed	1.03
98929		Osteopathic manipulation	1.19	1.19	1.19	Agreed	1.19
99201		Office/outpatient visit, new	0.38	Increase	0.39	Increased	0.45
99202		Office/outpatient visit, new	0.75	Increase	0.79	Increased	0.88
99203		Office/outpatient visit, new	1.14	Increase	1.20	Increased	1.34
99204		Office/outpatient visit, new	1.71	Increase	1.80	Increased	2.00
99205		Office/outpatient visit, new	2.28	Increase	2.41	Increased	2.67
99211		Office/outpatient visit, est	0.17	Increase	0.25	Decreased	0.17
99212		Office/outpatient visit, est	0.38	Increase	0.50	Decreased	0.45
99213		Office/outpatient visit, est	0.55	Increase	0.80	Decreased	0.67
99214		Office/outpatient visit, est	0.94	Increase	1.27	Decreased	1.10
99215		Office/outpatient visit, est	1.51	Increase	1.90	Decreased	1.77
99221		Initial hospital care	1.06	Increase	1.06	Increased	1.28
99222		Initial hospital care	1.84	Increase	1.84	Increased	2.14
99223		Initial hospital care	2.57	Increase	2.57	Increased	2.99
99231		Subsequent hospital care	0.51	Increase	0.65	Decreased	0.64
99232		Subsequent hospital care	0.88	Increase	1.30	Decreased	1.06
99233		Subsequent hospital care	1.25	1.97	1.75	Decreased	1.51
99238		Hospital discharge day	1.06	1.97	CPT		1.28
99241		Office consultation	0.54	Increase	0.63	Increased	0.64
99242		Office consultation	1.11	Increase	1.25	Increased	1.28
99243		Office consultation	1.47	Increase	1.90	Decreased	1.71
99244		Office consultation	2.23	Increase	2.50	Increased	2.56
99245		Office consultation	2.96	Increase	3.21	Increased	3.41
99251		Initial inpatient consult	0.54	Increase	0.63	Increased	0.66
99252		Initial inpatient consult	1.13	Increase	1.25	Increased	1.32
99253		Initial inpatient consult	1.56	Increase	1.90	Decreased	1.82
99254		Initial inpatient consult	2.27	Increase	2.50	Increased	2.64
99255		Initial inpatient consult	3.14	Increase	3.40	Increased	3.65
99261		Follow-up inpatient consult	0.36	Increase	0.65	Decreased	0.42
99262		Follow-up inpatient consult	0.74	Increase	1.30	Decreased	0.85

Table 1
Five-Year Review of Work Relative Value Units

CPT/HCPCS Code[1]	Mod	Description	1995 work RVU	requested work RVUs	RUC Rec	HCFA Decision	Proposed RVUs
99263		Follow-up inpatient consult	1.16	Increase	1.75	Decreased	1.27
99281		Emergency dept visit	0.28	0.54	B		0.33
99282		Emergency dept visit	0.47	0.54	B		0.55
99284		Emergency dept visit	1.68	2.20	1.68	Increased	1.95
99285		Emergency dept visit	2.63	3.20	2.63	Increased	3.06
99291		Critical care, first hour	3.64	3.64	4.00	Agreed	4.00
99292		Critical care, addl 30 min	1.84	1.84	2.00	Agreed	2.00
99296		Neonatal critical care	7.40	88.28	B		8.00
99301		Nursing facility care	1.07	Increase	CPT		1.28
99302		Nursing facility care	1.67	Increase	CPT		1.71
99303		Nursing facility care	2.29	Increase	CPT		2.14
99311		Nursing facility care,subseq	0.54	Increase	CPT		0.64
99312		Nursing facility care,subseq	0.89	Increase	CPT		1.06
99313		Nursing facility care,subseq	1.19	Increase	CPT		1.51
99341		Home visit, new patient	1.12	2.25	1.12	Increased	1.34
99342		Home visit, new patient	1.58	3.57	1.58	Increased	2.00
99343		Home visit, new patient	2.09	4.83	2.09	Increased	2.67
99351		Home visit, estab patient	0.83	1.65	0.83	Decreased	0.67
99352		Home visit, estab patient	1.12	3.00	1.12	Decreased	1.10
99353		Home visit, estab patient	1.48	4.00	1.48	Increased	1.77
99354		Prolonged service, office	1.51	2.33			1.77
99355		Prolonged service, office	1.51	1.20			1.77
99356		Prolonged service, inpatient	1.44	3.00			1.71
99357		Prolonged service, inpatient	1.44	1.50			1.71
99358		Prolonged serv, w/o contact	0.00	2.10	Z		
99359		Prolonged serv, w/o contact	0.00	1.00	Z		
99376		Care plan oversight/over 60	0.00	2.40	Z		

1 All CPT codes and descriptors copyright 1995 American Medical Association.

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B. Discussion of Comments by Clinical Area

1. Integumentary System

Comment: Numerous specialty societies surveyed and commented on the CPT codes for the integumentary system that they believed were undervalued or overvalued. In several instances, specialty societies were responding to reductions proposed by other commenters. The specialty societies' recommendations were supported with survey data and arguments that were based on changes in the patient population, changes in technology, and rank-order anomalies. Survey samples were of sufficient size to validate the results. Additionally, specialty societies made cross-specialty comparisons to similar procedures. The comparisons gave support to arguments and survey data.

RUC Evaluation/Recommendation: Generally, the RUC found the data, comparisons, and arguments convincing. The RUC looked for compelling evidence that the procedure had changed, the patient population had changed, or the code had been originally undervalued or overvalued. When the RUC recommended different work RVUs, it typically attempted to reconcile new survey data and rationale with Harvard data, producing final recommended work RVUs. In all, the RUC recommended that the work RVUs for 6 codes be reduced in value, for 15 codes be increased in value, and for 35 codes be maintained at the current value.

HCFA Decision: We agree with the RUC on most of its findings, but we have rejected the RUC recommendations for the following eight integumentary system codes:

CPT codes 15570 through 15576 (Formation of direct or tubed pedicle, with or without transfer).

There are four codes in this family that are used to report the formation of direct or tubed pedicles in different body areas. We received a comment that all of these codes are undervalued when compared to the corresponding adjacent flap codes, CPT code 14001 with 7.78 work RVUs, CPT code 14021 with 9.37 work RVUs, and CPT code 14040 with 7.18 work RVUs.

In its recommendation to us, the RUC indicated that several old codes, CPT codes 15500 through 15515, which were valued by Harvard, were deleted in 1992 and replaced with CPT codes 15570 through 15576. The RUC also noted that the new codes are misvalued and that no explanation had been received describing how the work RVUs of these codes were determined. The current survey results show median work RVUs of 9.85 and a median intraservice time of 105 minutes for CPT code 15570; median work RVUs of 9.63 and a median intraservice time of 90 minutes for CPT code 15572; median work RVUs of 10.50 and a median intraservice time of 120 minutes for CPT code 15574; and median work RVUs of 8.50 and a median intraservice time of 90 minutes for CPT code 15576. These results agree with the Harvard data for the original codes, CPT codes 15500 through 15515. Based on the survey results and the lack of rationale for the current work RVUs, the RUC recommended that the codes be valued at the same level established by Harvard for the original deleted codes.

We have not accepted the RUC recommendations for two reasons. First, the RUC's understanding of the source of the work RVUs for the current codes is incorrect and second, we believe the vignettes that were surveyed may have led to an overestimation of the work.

These four codes first appeared in CPT 1992, following a revision of this section of CPT. The codes do not correspond directly to the deleted codes (CPT codes 15500 through 15515) cited by the RUC because other codes (CPT codes 15540 through 15555 and 15700 through 15730) also were deleted and crosswalked to the new codes. Because we viewed the coding change as significant, we did not accept the work RVUs developed by Harvard for CPT codes 15500 through 15515 as a valid basis for the new codes. We proposed work RVUs for the current CPT codes 15540 through 15555 in the November 25, 1991 final rule for the 1992 physician fee schedule (56 FR 59502). Because the comments that we received suggested that the proposed work RVUs were too low, we referred the codes to one of the multispecialty refinement panels that met in May 1992. Based on the ratings of that panel, no changes were made in the work RVUs, and they became final work RVUs effective January 1, 1993.

The vignettes that were surveyed by the RUC describe patient problems and services that we believe may have led to an overestimation of the work involved in the formation of direct or tubed pedicles. For example, the vignette for CPT code 15574 reads:

A 56-year-old hunter sustains a gun shot injury to his left hand. He is brought to the hospital and initial debridement, fracture stabilization and temporary wound cover is accomplished with dressing changes. A tailored groin flap is planned for coverage of the dorsal defect. At operation, a random patterned groin flap is elevated. The hand is, again, thoroughly debrided and lavaged, and the groin flap is placed. The abdominal wound is closed by primary advancement of the abdominal skin. The postoperative care is routine until either further delay or separation occurs.

The preservice work is described as including an assessment of the patient in the emergency room. The intraservice work is described as including the creation of a special dressing to maintain the relative positions of the hand, the flap, and the abdominal wall. We are concerned that the survey respondents may have considered the work of debridement, fracture stabilization, initial emergency room evaluation, and immobilization of the hand, flap, and abdomen in their estimates of work. If so, the work RVUs are excessive because those other services can be reported and paid separately. Therefore, we are maintaining the current work RVUs.

CPT code 15580 (Cross finger flap, including free graft to donor site).

We received a comment that this code is undervalued when compared to CPT code 15240 (Skin full graft procedure) and CPT code 15100 (Skin split graft procedure). It was argued that the current work RVUs do not account for the intraservice time and work involved in harvesting and applying the skin graft. Survey data showed a median intraservice time of 90 minutes and median work RVUs of 9.00. The RUC recommended that the work RVUs be increased based on the survey results and its conclusion that the comparison to skin graft procedures was appropriate.

We have not proposed a change in the work RVUs for this code because we are concerned that CPT is not clear regarding the separate reporting of a graft to the donor site, and the vignette may have led to an overestimation of work. There is a note in the introductory paragraphs for the flap codes that states: ''Repair of donor site requiring skin graft or local flaps is considered an additional separate procedure.'' This contradicts the terminology of CPT code 15580 and could be a source of confusion.

The vignette that was used in the survey reads: A 36-year-old laborer sustains an avulsion injury of the volar aspect of the middle of phalanx of the left index finger in a grinding machine. The profundus tendon is intact and the neurovascular bundles are intact. At operation, a cross finger pedicle flap from the dorsum of the adjacent left middle phalanx is elevated and rotated downward and placed on the volar aspect of the adjacent finger. The donor site defect was reconstructed with a full thickness skin graft harvested from the left groin. Both the pedicle and the skin graft were sewn in place. The postoperative care is routine for that of a split thickness skin graft.

The preservice work is described as including an assessment of the patient in the emergency room. The description of the intraservice work includes thorough debridement and immobilization of the fingers in a specially constructed dressing to remove tension from the flap by preventing motion.

We are concerned that the survey respondents may have considered the work of debridement, initial emergency room evaluation, and immobilization of the fingers in their estimates of work. If so, the work RVUs are excessive because the other services can be reported separately. Therefore, we are maintaining the current work RVUs.

CPT codes 17000, 17001, and 17002 (Destruction by any method of benign facial or premalignant lesions in any location).

An individual who underwent the destruction of skin lesions commented that the physician charges for these procedures were excessive. He stated that the application of liquid nitrogen is not time consuming and is an insignificant cost and that the physician work involved is minimal and does not require great skill. We forwarded the comment to the RUC. The specialty society recommended to the RUC that the work RVUs for these codes be maintained.

The RUC responded by indicating that the intention of the RUC and the 5-year review is to examine work RVUs. The RUC concluded that the comment we forwarded was based on charges the commenter incurred, a matter which is not directly related to the mission of the RUC. Therefore, the RUC recommended that the current work RVUs be maintained.

We acknowledge that part of the individual's comments related to the charges he incurred. However, we believe that the commenter raised a legitimate concern about the amount of physician work when he made reference to the amount of time, physician involvement, and skill required to destroy a skin lesion. Therefore, we reexamined the work RVUs assigned to these codes and concluded they are too high when compared to other services on the fee schedule. CPT code 17000 (Destruction of a single benign facial or premalignant lesion) currently has work RVUs that are approximately 3.5 times higher than the work RVUs assigned to the destruction of a second similar lesion (CPT code 17001). There are no other services with such a variance. A more appropriate valuation of CPT code 17000 would set the initial lesion destruction at about twice the level of the work RVUs for a subsequent lesion. Therefore, we are proposing 0.36 work RVUs. This downward revaluation of CPT code 17000 is supported by comparing the proposed work RVUs to the following reference services: CPT code 11700 (Debridement of nails), with 0.32 work RVUs, and CPT code 11050 (Paring of skin lesion), with 0.43 work RVUs. These services are comparable to CPT code 17000 in terms of setup time, procedure time, risk, and aftercare.

We also believe that CPT code 17001 (Destruction of second and third benign facial or premalignant lesion, each) and CPT code 17002 (Destruction of over three lesions, each additional lesion) are overvalued. We propose to reduce the work RVUs of these codes to 0.14. The proposed work RVUs for these codes would maintain approximately the same ratio to CPT code 17101, with 0.11 work RVUs, and CPT code 17102, also with 0.11 work RVUs, as CPT code 17000, with 0.64 work RVUs, now has to CPT code 17100, with 0.53 work RVUs, that is, about 1.2. In other words, we believe the current relative relationship of work RVUs for the destruction of benign facial or premalignant lesions (CPT code 17000) to the work RVU for the destruction of benign lesions in areas other than the face (CPT code 17100) is correct but the work RVUs are too high.

Additionally, we are concerned that there is an inconsistency in the current CPT coding for these two groups of codes. For benign non-facial lesion destruction, CPT code 17104 is only reported once for any number of lesions numbering 15 or more. There is not currently a parallel code for benign facial or premalignant lesions, and there is no limitation on the number of times CPT code 17002 can be reported for lesions removed during a single visit. Also, we did not receive comments on all of the destruction codes so we have not addressed in this notice other destruction of skin lesion codes that appear to be overvalued. We plan to address our concerns regarding the coding and work RVUs for those services in the future.

2. Orthopaedic Surgery

Originally, the American Academy of Orthopaedic Surgeons submitted a study of 1,300 orthopaedic services conducted by Abt Associates, Inc. for review during the 5-year review. In addition, the American Academy of Orthopaedic Surgeons submitted detailed comments on 41 procedures. The Abt study involved a combination of a telephone survey of randomly selected orthopaedic surgeons and multiple consensus panels comprised of orthopaedic subspecialists and generalists. The American Academy of Orthopaedic Surgeons considered the work RVUs that resulted from the study to be much more appropriately aligned than the current work RVUs. In addition, the American Academy of Orthopaedic Surgeons believed that the work RVUs in the current scale are compressed at both the low and the high end, whereas the Abt values expand the scale in both directions.

The American Academy of Orthopaedic Surgeons stated that the Harvard study underestimated the intraservice work of many of the services its members furnish. The commenter was particularly concerned that the work RVUs for many of the services are based on a survey of general orthopaedic surgeons with little or no experience performing highly specialized services normally provided by subspecialists within orthopaedic surgery, such as pediatric orthopaedic surgeons. For example, Harvard included general orthopaedic surgeons in the survey for CPT code 28262 (Capsulotomy, midfoot; extensive, including posterior talotibial capsulotomy and tendon(s) lengthening as for resistant clubfoot deformity) while the American Academy of Orthopaedic Surgeons surveyed pediatric orthopaedic surgeons with much more experience performing the procedure. The American Academy of Orthopaedic Surgeons' survey confirmed that the Harvard study had underestimated intraservice time.

The RUC reviewed the methodology used by Abt and concluded that the RUC should consider a survey of representative codes using Abt's methodology to validate the relationship of the Abt-developed work RVUs to RUC-developed work RVUs. Instead, the American Academy of Orthopaedic Surgeons elected to withdraw the Abt study and the comments on 41 codes. The American Academy of Orthopaedic Surgeons also elected to conduct a survey of the work involved in 83 codes that it believed were misvalued in accordance with the RUC process. The American Academy of Orthopaedic Surgeons involved 11 national orthopaedic subspecialty organizations in this survey.

The RUC reviewed and recommended increases in work RVUs for 37 of the 83 codes presented by the American Academy of Orthopaedic Surgeons. The RUC reviewed an additional 15 services based on comments from the American Academy of Pediatrics, the American Society of Plastic and Reconstructive Surgeons, and other commenters. In general, the RUC did not accept recommendations for increased work RVUs when the American Academy of

Orthopaedic Surgeons' survey time data were similar to Harvard data or when the reference services cited were not appropriate. The RUC recommended increased work RVUs to correct rank-order anomalies in codes for which the American Academy of Orthopaedic Surgeons' surveys confirm that the intraservice time for the procedure was underestimated in the Harvard study and the patient population had changed in the past 5 years.

The RUC also reviewed and recommended decreases for 10 of the 12 following orthopaedic services, which the RUC identified as potentially overvalued based on special analyses of trends in claims data and the intensity (work per unit of time) of the intraservice work. This intensity of intraservice work is expressed as IWPUT, which is an acronym for intraservice work per unit time.

CPT code	Descriptor
25065	Biopsy, soft tissue of forearm and/or wrist; superficial.
26992	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess), pelvis and/or hip joint.
27001	Tenotomy, adductor of hip, subcutaneous, open.
27003	Tenotomy, adductor, subcutaneous, open, with obturator neurectomy.
27006	Tenotomy, adductors of hip, subcutaneous, open (separate procedure).
27040	Biopsy, soft tissue of pelvis and hip area; superficial.
27090	Removal of hip prosthesis (separate procedure).
27265	Closed treatment of post hip arthroplasty dislocation; without anesthesia.
27266	Closed treatment of post hip arthroplasty dislocation; requiring regional or general anesthesia.
27323	Biopsy, soft tissue of thigh or knee area; superficial.
27550	Closed treatment of knee dislocation; without anesthesia.
64763	Transection or avulsion of obturator nerve, extrapelvic, with or without adductor tenotomy.

The description of, and rationale for, these decreases is included in section II.C.7. of this notice, which contains the discussion of the entire group of services identified as potentially overvalued.

HCFA Decision: We have accepted all of the RUC recommendations for the orthopaedic surgery codes.

3. Otolaryngology and Maxillofacial Surgery

The American Academy of Otolaryngology—Head and Neck Surgery, Inc. submitted a study conducted for it by Abt Associates, Inc. that covered 800 codes, 417 of which are considered to be primary otolaryngology codes, and 100 of which were discussed in detailed comments for the 5-year review. The 100 codes represent approximately 10 percent of the universe of otolaryngolog—head and neck surgery services. The comments reflect the opinions of about 40 American Academy of Otolaryngology—Head and Neck Surgery, Inc. members with expertise in the services chosen. The American Academy of Oral and Maxillofacial Surgeons and the American Society of Plastic and Reconstructive Surgeons, Inc. also submitted comments and presented recommendations to the RUC for some of the codes discussed in this section.

The RUC reviewed the methodology used by Abt and concluded that the RUC should consider a survey of representative codes using RUC methodology to validate the relationship of the Abt-developed work RVUs to the RUC-developed work RVUs. The American Academy of Otolaryngology—Head and Neck Surgery, Inc. surveyed and submitted recommendations for 53 codes using the RUC methodology. The survey response rate was low for many of the codes for which we originally received comments during the public comment phase and, therefore, the American Academy of Otolaryngology—Head and Neck Surgery, Inc. chose to withdraw these codes from the RUC review.

The RUC was concerned by the lack of compelling evidence for changing many of the services presented by the American Academy of Otolaryngology—Head and Neck Surgery, Inc. and recommended that their current work RVUs be maintained. The RUC identified several problems with these services: Survey results for preservice and postservice time appeared to be overstated; inappropriate reference services with different global periods were used; the only arguments were that the patient population presented increased risk of HIV and hepatitis to the physician, the patients had previous radiation treatment, and acceptable vocal cord capability is now more important to patients. In addition, commenters made many recommendations to increase the current work RVUs, but the American Academy of Otolaryngology—Head and Neck Surgery, Inc. data were very similar to the Harvard time data. The RUC also did not find the argument that the IWPUT was understated, without any other evidence, a compelling reason to increase the work RVUs.

The RUC recommended increased work RVUs for 30 codes to correct rank-order anomalies, address problems when American Academy of Otolaryngology—Head and Neck Surgery, Inc. surveys confirm that the intraservice time for the procedure was underestimated in the Harvard study, and when the patient population had changed in the past 5 years making the services more complex.

HCFA decision: We have accepted the RUC recommendations for work RVUs for 24 of the codes but have rejected its recommendations for the following 6 codes: *CPT code 21025 (Excision of bone, lower jaw).*

The current work RVUs are 5.03. A commenter recommended an increase to 8.98 work RVUs since this code is similar to CPT code 24134 (Removal of arm bone lesion). The RUC noted that a rank anomaly exists between this service and CPT code 21030 (Excision of benign tumor or cyst of facial bone other than mandible) and CPT code 21041 (Excision of benign cyst or tumor of mandible; complex). The American Academy of Oral and Maxillofacial Surgeons' survey median for intraservice time is 120 minutes, which is significantly higher than CPT code 21041 and reference service CPT code 24134. Thus, the RUC recommended that the American Academy of Oral and Maxillofacial Surgeons' survey median of 8.92 work RVUs be adopted.

We believe that the surveyed vignette does not represent the typical patient, and it includes services for which other codes can be reported. The vignette describes a patient with intraoral and extraoral swelling and suppuration from multiple fistulae. Dissection of the inferior alveolar nerve is required and hyperbaric oxygen is initiated. We believe this vignette describes a patient with much more extensive infection than the typical patient. It is also our view that CPT code 21030, which has 7.05 work RVUs, is more difficult than this procedure. Therefore, we are retaining the current 5.03 work RVUs for CPT code 21025. *CPT codes 31531, 31536, 31541, 31561, and 31571 (Operative laryngoscopies).*

We received comments that CPT codes 31541, 31561, and 31571 are undervalued because of increased patient complexity and greater emphasis on acceptable vocal results. The RUC did not find those arguments compelling enough to suggest a change in work RVUs.

However, the RUC identified rank order anomalies in the work RVUs for direct laryngoscopies and the corresponding procedures using an operating microscope. Among the five

pairs of procedures, the difference in work RVUs for use of the operating microscope varies from −0.57 to +0.34 work RVUs. The RUC recommended retaining the 1995 work RVUs for the direct laryngoscopies (CPT codes 31530, 31535, 31540, 31560, and 31570) and adding a constant 0.40 work RVUs to arrive at the work RVUs for the corresponding procedures using an operating microscope (CPT codes 31531, 31536, 31541, 31561, and 31571).

We disagree with the concept of increasing the work RVUs for procedures using an operating microscope and believe that the work RVUs for a procedure generally should be the same, regardless of the technique used. For example, the destruction of skin lesions (CPT codes 17000 through 17105) are valued the same regardless of the method of destruction. Therefore, we have established work RVUs that are the same for both codes in a pair.

4. Podiatry

The American Podiatric Medical Association submitted comments on services that its members frequently perform that may be inappropriately valued. The organization's comments were based on surveys of the members of the organization representing the spectrum of foot and ankle services, as well as geographic diversity. In addition, the organization relied on data from two previous national surveys on preservice and intraservice care prepared by the American Podiatric Medical Association for the Physician Payment Review Commission.

The American Podiatric Medical Association submitted recommendations to the RUC for review in two formats: surveyed services with completed summary of recommendation forms and a letter detailing rationale for those services they did not survey. The Association also commented on 13 codes that it considers to be overvalued.

RUC Evaluation/Recommendation: The RUC's position was that the American Podiatric Medical Association had not provided compelling evidence for changing the work RVUs for any of the services for which no survey was conducted. Neither did the RUC find surveys that only confirmed the Harvard survey times to be sufficient evidence to justify change. However, the survey data for CPT codes 28113 and 28288 and HCPCS code M0101 persuaded the RUC to recommend increases in the work RVUs for these services. The RUC also did not concur with the American Podiatric Medical Association's comment about overvalued procedures and recommended that the current work RVUs be maintained.

HCFA Decision: We have accepted all but one of the RUC's 20 recommendations for podiatry (19 resulting from the American Podiatric Medical Association's comments and one to maintain a rank order between codes): *HCPCS code M0101 (Cutting or removal of corns).*

The current work RVUs are 0.37. A commenter recommended that we increase the work RVUs to 0.70 based on the view that this service is significantly more difficult than the work for CPT code 11050 (Paring or curettement of benign hyperkeratotic skin lesion with or without chemical cauterization (such as verrucae or clavi) not extending through the stratum corneum (e.g., callus or wart) with or without local anesthesia; single lesion), which is valued at 0.43 work RVUs, and CPT code 11700 (Debridement of nails, manual; five or less), which is valued at 0.32 work RVUs. The preservice work is slightly greater than reference procedures CPT codes 11050 and 11700, but the intraservice work was reported by a survey as 250 percent greater than either reference procedure. The commenter stated that the technical skill for these services is similar; however, physical effort is much greater for HCPCS code M0101. The RUC agreed that HCPCS code M0101 involves more work than treating 2 skin lesions and trimming 10 toenails and that this service is undervalued. It proposed 0.45 work RVUs. We disagree with these proposed work RVUs. The description of this service is ''cutting or removal of corns, calluses and/or trimming of nails, application of skin creams and other hygienic and preventive maintenance care (excludes debridement of nail(s).''

We believe that the service most reported by this code is trimming of nails, which is of less intensity than the work associated with cutting or removal of corns and calluses. The typical service involves the less intense portions of this complex definition. The surveys conducted by the American Podiatric Medical Association used vignettes of patients with circulatory impairment and neurologic deficit accompanying systemic disease. The existence of these comorbid conditions may not accurately reflect the work RVUs for the typical patient. Although current Medicare coverage is restricted to the more difficult patients with coexisting disease, we base the work RVUs on the typical patient. The RUC survey methodology is based on vignettes that are intended to describe the typical patient and service. In this case, we believe the vignette describes an unusual or atypical patient which results in an RVU recommendation that exceeds the current work RVUs. We believe that the usual service of trimming of nails is less work than the paring or curettement of other less common procedures such as benign hyperkeratotic skin lesions and, therefore, have decided to maintain the current 0.37 work RVUs.

5. Cardiology and Interventional Radiology

The RUC considered comments submitted by the Society of Cardiovascular and Interventional Radiology, the Society of Critical Care Medicine, and the American College of Cardiology on 25 cardiology and interventional radiology procedures.

The Society of Cardiovascular and Interventional Radiology reported to the RUC that it did not conduct a RUC survey. The Society of Cardiovascular and Interventional Radiology sent a survey containing all of the interventional radiology codes to 60 interventional radiologists that asked the physicians to evaluate the 1995 work RVUs for each code and select those codes that they believed were misvalued. For the codes selected, the respondents were instructed to indicate which CPT code they believed more accurately described the service in terms of time and intensity. These responses were evaluated by a small working group formed by the Society of Cardiovascular and Interventional Radiology consisting of physicians that are familiar with CPT, work RVUs, and the RUC process. Those codes that were identified by the working group as misvalued were the codes upon which that society commented. In its comments to us and during the RUC presentation, the Society of Cardiovascular and Interventional Radiology mentioned that the physician work for vascular ultrasound studies is equal to all other diagnostic ultrasound services, including those in the abdomen, chest, pelvis, retroperitoneum, and heart. The work RVU recommendations are based on work RVUs for either ''limited'' or ''complete'' ultrasound examinations in those areas.

HCFA Decision: We have accepted all but two of the RUC recommendations for the cardiology and interventional radiology codes: CPT codes 93307 and 93312, both for echo exam of heart.

CPT code 93307 (Echocardiography, real-time with image documentation (2D) with or without M-Mode recording; complete).

We received a comment that the field of echocardiography has changed significantly in the past 5 years, in both

clinical utility and diagnostic complexity. Although the technical innovations of the past 5 years have made this an easier service to perform, the patients that require this service are more complex, which has resulted in an increased amount of physician work. The physicians are viewing and making judgments on constantly moving objects, which increases the possibility of misinterpretation. Often this service is furnished in acute care settings or emergency situations, which increase physician stress. The information derived from this study is used in the development of critical management decisions. The risk of misdiagnosis, in both emergent and nonemergent situations, can lead to potentially fatal events.

The current work RVUs for echocardiography are 0.78. The RUC agreed that the code is undervalued based on the amount of physician work that is required to perform this study and the increased amount of information that can now be derived from echocardiography. However, the RUC believed that the specialty society recommendation of 1.48 work RVUs was too high and recommended the Harvard value for this procedure, which was 1.06 work RVUs.

We do not agree that echocardiography is undervalued. We believe that technical innovations have made physician interpretations of echocardiograms less difficult than in the past. We also believe that some of the work that is being reported as physician work is actually the work of technicians. For example, the description of intraservice work provided to the RUC implies that physicians review entire tapes and analyze and measure the structure and dynamics of the chambers, valves, and great vessels. It is our understanding that much of this information is prepared by technicians for subsequent review by physicians. We consider the work of technicians to be a practice expense that is reflected in the practice expense RVUs, not the physician work RVUs. We also question whether the vignette surveyed by the specialty society, which describes an echocardiogram performed on an acutely ill patient in need of emergency echocardiography, represents the typical patient requiring echocardiography. Medicare claims data from calendar year 1995 indicate that 50 percent of claims for CPT code 93307 are billed with place of service as office or outpatient hospital and 49 percent are billed with place of service as inpatient hospital. This suggests that the typical patient is not critically ill or that there is a bimodal distribution of patients.

CPT code 93312 (Echocardiography, real-time with image documentation (2D) (with or without M-Mode recording), transesophageal; including probe placement, image acquisition, interpretation and report).

We received a comment that transesophageal echocardiography is undervalued in comparison to other services that require similar physician work effort and that performance of this procedure requires considerable mental effort. As described above in the discussion of CPT code 93307, the heart is constantly moving, increasing the possibility of misinterpretation, which could lead to misdiagnosis. There is an added technical skill required by the physician to insert the probe into the esophagus and the stomach of a critically ill patient. This procedure is often performed in the emergency setting while the patient is under conscious sedation. As a point of reference, the RUC reviewed Harvard Phase III data that show 2.76 work RVUs (adjusted to be on a scale equivalent to 1995 work RVUs) for upper gastrointestinal endoscopy (CPT code 43235), the reference code being used in this comparison. These work RVUs are higher than both the existing 1.57 work RVUs and the 2.39 work RVUs recommended by the specialty society. The RUC agreed with the specialty society rationale and recommended an increase to 2.39 work RVUs.

For reasons similar to those described above for CPT code 93307, we do not believe that transesophageal echocardiography is undervalued. This service was considered by a refinement panel in 1993, and, based on the ratings of the panel, the RVUs were not increased. We do not find the new evidence submitted by the RUC to be sufficient to warrant an increase in RVUs.

6. General Surgery, Colon and Rectal Surgery, and Gastroenterology

The review of general surgery procedures primarily addressed comments submitted by the American College of Surgeons on codes identified as misvalued through a study conducted by Abt Associates, Inc. Although this study identified many procedures as potentially misvalued, the American College of Surgeons' comments selected only 30 codes for review, based on the magnitude of the potential change and their frequency and expenditures. The American College of Surgeons recommended both increases and decreases.

The American Society of General Surgeons also submitted comments on a number of procedures, including several general surgery procedures, and their suggestions were consistent with some of those made by the American College of Surgeons.

The American Society of Colon and Rectal Surgeons submitted comments indicating that the partial colectomy codes and hemorrhoidectomy codes should be reviewed to place them in a more correct rank-order from least to most difficult. Other commenters also identified rank-order problems in these families and further identified three overvalued procedures. The American Society of General Surgeons recommended that the work RVUs for several colon and rectal procedures be increased.

Comments were submitted by the American College of Gastroenterology and another commenter on several gastroenterology codes.

Of the 30 codes on which the American College of Surgeons commented, the RUC recommended adopting most of the recommended decreases and a few of the recommended increases, based on results from a survey of 175 surgeons, comparisons to the final Harvard study results, comparisons to key reference services, and analysis of Medicare claims data.

The current work RVUs for several of the codes identified by the American Society of General Surgeons, however, are based on recent RUC recommendations, and, in the absence of new evidence, the RUC did not believe reconsideration was warranted for these codes.

The RUC agreed with most of the changes recommended by the American Society of Colon and Rectal Surgeons based on the evidence provided by the Society.

The RUC did not believe compelling new evidence had been provided to support either an increase or a decrease in the work RVUs for the gastroenterology codes on which the American College of Gastroenterology commented. The RUC has previously reviewed most work RVUs for the gastroenterology procedures and has recently considered the evidence for adjusting these work RVUs and did not find the evidence to be persuasive.

HCFA Decision: We have accepted all but one of the RUC recommendations for general surgery, colon and rectal surgery, and gastroenterology codes:

CPT code 43830 (Place gastrostomy tube).

The current work RVUs are 4.84. A commenter noted that an anomaly exists

between CPT code 43750 (Place gastrotomy tube), which is assigned 5.71 work RVUs, and CPT code 43830 since the latter procedure is more complex. The commenter recommended 7.50 work RVUs. The RUC noted that the Harvard data indicate that the IWPUT for CPT code 43750 is 0.082, while it is 0.059 for CPT code 43830. Since CPT code 43830 is much more complex than CPT code 43750, the IWPUT is the reverse of the appropriate relationship. The RUC recommended 7.50 work RVUs for CPT code 43830.

We relied on Harvard work RVUs to reestablish the proper relationship by accepting the decrease recommended by the RUC for CPT code 43750 and increasing CPT code 43830 to 6.52 work RVUs. We rejected the RUC recommendation of 7.50 work RVUs for CPT code 43830 as too high since this recommendation would value placement of a gastronomy tube higher than CPT code 49507 (Repair of an inguinal hernia), which is assigned 7.40 work RVUs and appear to approximate the work of placing a gastrostomy tube.

7. Urology

Commenters advocated reductions in about 40 urology-related CPT codes. In most cases, commenters based their rationale on comparisons to cross-specialty procedures. Work RVUs were reduced to the level of the work RVUs of the cross-specialty procedure. The commenters also attempted to link the reduction of one code in a family to other codes in an effort to maintain the reduction of work RVUs throughout the family. Typically, the response of the American Urological Association was to survey the code and to refute the cross-specialty link established by the commenters. The rationale established by the American Urological Association was generally compelling in that it was based on anatomical, technical, and patient-population differences that proved the cross-specialty comparisons to be faulty. Usually, the American Urological Association's arguments were supported by survey data that validated their claims when compared to Harvard data. In many instances, surveyed intraservice time was greater than the Harvard data showed, and work RVUs turned out to be greater than established 1995 work RVUs.

RUC Evaluation/Recommendation: The RUC examined the American Urological Association's arguments against the cross-specialty links and proposed work RVU reductions. They evaluated the aspects of the arguments and typically came to the conclusion that the reference procedures chosen for comparison by the commenters were inappropriate. The RUC also analyzed survey data to determine if time and complexity measures were sufficient to support the arguments of the American Urological Association. The RUC also looked at time and complexity gains to ascertain if increased work RVUs were necessary. The basis for many of the comments was comparison between urology codes and codes in other specialties. As part of its review, the RUC compared several urology codes to other procedures on its multiple points of comparison reference set based on the IWPUT. The urology codes proved to be well within expected levels. For example, CPT code 50010 (Exploration of kidney) has an IWPUT of 0.094, which compares to CPT code 93510 (Left heart catheterization), with an IWPUT of 0.099; CPT code 26531 (Revise knuckle with implant), with an IWPUT of 0.090; CPT code 66984 (Remove cataract, insert lens), with an IWPUT of 0.121; or CPT code 61700 (Inner skull vessel surgery), with an IWPUT of 0.088. CPT code 54200 (Treatment of penis lesion) has an IWPUT of 0.038, which compares to CPT code 11642 (Removal of skin lesion), with an IWPUT of 0.047; CPT code 45110 (Removal of rectum), with an IWPUT of 0.061; or CPT code 46260 (Hemorrhoidectomy), with an IWPUT of 0.049. Generally, the RUC found that the recommended reductions were not appropriate, but that rationale and data were also not sufficiently compelling to support specialty-recommended increased work RVUs. As a result, the RUC recommended that 37 of the 46 codes be maintained at 1995 levels.

HCFA Decision: We have accepted all but three of the RUC recommendations for the urology codes: CPT code 50205 (Biopsy of kidney).

The current work RVUs are 12.69. A commenter recommended a decrease to 6.75 work RVUs since the procedure requires no more work, time, or effort than CPT code 47100 (Wedge biopsy of liver), which is assigned 6.75 work RVUs. In addition, the commenter argued, this procedure is incorrectly valued relative to kidney exploration; the biopsy should be lower than an exploration. The RUC noted that most renal biopsies are not open but percutaneous procedures; however, CPT code 50205 is an open procedure. Survey data show median intraservice time of 75 minutes and median work RVUs of 18.50. Although the American Urological Association recommended increasing the work RVUs up to the survey median, the RUC found no compelling evidence to increase the work RVUs.

We rejected the RUC recommendation to retain the current work RVUs and have assigned 10.50 work RVUs, a value slightly greater than CPT code 50010 (Exploration of the kidney) to reflect the added work of the open procedure biopsy.

CPT code 50590 (Lithotripsy, extracorporeal shock wave).

The current work RVUs are 9.62. A commenter recommended a reduction to 6.54 work RVUs based on an argument that this is not a surgical procedure. The commenter compared the intraservice work to 1 hour of critical care. The proposed work RVUs also include two hospital visits (CPT codes 99221 and 99231) and 2.5 level-three office visits (CPT 99213). The RUC believed that this procedure is similar to a surgical procedure in that anesthesia is used and a urologist is always present. The RUC concluded that the current work RVUs should not be reduced based on its analysis of survey data showing a median intraservice time of 80 minutes.

We disagree with the RUC recommendation to maintain the 9.62 work RVUs. We believe the intraservice intensity of extracorporeal shock wave lithotripsy is more comparable to evaluation and management services than traditional surgical services. For example, the current 9.62 work RVUs are higher than those for an exploratory laparotomy (CPT code 49000), with 8.99 work RVUs. We have assigned 7.13 work RVUs to CPT code 50590 based on 90 minutes of critical care (CPT codes 99291 and 99292), with work RVUs of 3.64 and 1.84, respectively, and three mid-level office visits (CPT code 99213), with 0.55 work RVUs.

CPT code 51741 (Electro-uroflowmetry, first).

The current work RVUs are 1.57. A commenter recommended a reduction to 1.14 work RVUs to bring the code into correct alignment with the family of codes. The RUC recommended no change in the current work RVUs. We believe that a reduction in work RVUs to 1.14 is appropriate to maintain the proper relationship to CPT code 51736 (Urine flow measurement), which the RUC reduced from 0.84 work RVUs to 0.61 work RVUs.

8. Gynecology

Comment: The American College of Obstetricians and Gynecologists has had significant and longstanding concerns about the accuracy of the work RVUs assigned for obstetric and gynecologic services. The American College of Obstetricians and Gynecologists believed that the work RVUs for services furnished to women have been historically undervalued when

compared to similar services on men or on similar anatomical structures. The American College of Obstetricians and Gynecologists presented survey data and arguments for 45 codes, 44 of which recommended increased work RVUs. In addition to providing survey data, the American College of Obstetricians and Gynecologists developed rationales based on a ''building block'' method using survey data on service characteristics and work RVUs of established codes. The building block method also uses preservice, postservice, and intraservice work intervals to assign physician work RVUs to the individual components of the global surgical services package. Appropriate work RVUs for preservice and postservice intervals for the evaluation and management services were selected based on length of time, number of visits, clinical setting, and judgment of level of care required. Using this method, the American College of Obstetricians and Gynecologists was able to arrive at work RVU estimates for surgical codes with a variety of global periods.

The survey data in almost every case supported an increase in work RVUs. The surveys had a minimum survey sample size of 100 and response rates in excess of 30 percent. The surveyed intraservice times were consistently substantially greater than Harvard intraservice times. The work RVUs that were derived from a survey were in every case greater than the established work RVUs. When the building block method was used, it produced results that confirmed the survey data and argued for increased work RVUs. The American College of Obstetricians and Gynecologists used cross-specialty comparisons to validate both survey data and its building block method. Cross-specialty comparisons were especially convincing when direct parallels could be drawn to similar services on men or similar procedures to manage like disease in different organs.

RUC Evaluation/Recommendation: The RUC found the multiple independent points of validation convincing. The survey, building block, and cross-specialty comparisons typically supported the claim for increased work RVUs. Generally, the RUC was skeptical of the building block approach. The RUC believed that there was too much room for subjective selection of the type and level of evaluation and management services. The RUC also recognized that double counting and overestimation of work components may yield results for which the sum of the parts exceeds the whole. Typically, the RUC accepted the lowest work RVU increase generated by the three methods.

HCFA Decision: We have accepted all of the RUC recommendations for the gynecology codes.

9. Neurosurgery

Comment: The American Association of Neurological Surgeons/Congress of Neurological Surgeons submitted comments identifying 73 misvalued services, both undervalued and overvalued. The comments presented a detailed history of the work RVUs for neurosurgery, identifying several problems in the methodology and results of the original Harvard study, particularly in the change from intraoperative work to total work in the cross-specialty linkage process and in review by refinement panels. The commenter attributed the basic problem to the Harvard cross-specialty linkage process, arguing that it caused distortions and compressions of work RVUs within the neurosurgery services. Although this was corrected to some degree in Phase III of the Harvard study, the 1992 refinement panels did not accept many of the final Harvard numbers for neurosurgical procedures. Even the final Harvard data contain errors in data on postservice work, and the study often does not assume any intensive care unit visits when at least several would be furnished by the neurosurgeon.

Most of the arguments presented focus on the nontemporal components of physician work, described as ''intensity.'' The commenters explained that the current work RVUs do not accurately reflect the varying levels of intensity for different neurosurgical procedures, nor within the different components of each service. To identify the specific codes that are misvalued in the current scale, the American Association of Neurological Surgeons/Congress of Neurological Surgeons conducted a survey in 1994. This organization surveyed a representative sample of 200 neurosurgeons to evaluate in detail the time and intensity of the key reference services for neurosurgery in accordance with our discussion of the nature and format of comments on work RVUs that appeared in our December 8, 1994 final rule (59 FR 63454 to 63455). The survey did not ask physicians to reevaluate the total work RVUs for these procedures. The time data gathered from this study, which included detailed operative logs on over 1,500 neurosurgical patients, were found to correspond closely to the final Harvard Phase III data, and the American Association of Neurological Surgeons/Congress of Neurological Surgeons concluded that the survey validated the Harvard results for this component of work. The study also attempted to directly measure mental effort and judgment, technical skill and physical effort, and psychological stress, rather than calculating it as a ratio of work to time. This allowed for more variation within each component of intensity and greater precision in calculating work RVUs. This research confirmed the problems initially identified by the American Association of Neurological Surgeons/Congress of Neurological Surgeons that, for some of the most complex procedures, preservice and postservice work were underestimated by 30 to 40 percent.

The focus of the American Association of Neurological Surgeons/Congress of Neurological Surgeons' comments was on appropriately valuing the codes within neurosurgery by adjusting the rank-orders upwards and downwards. To develop its recommendations to the RUC, the American Association of Neurological Surgeons/Congress of Neurological Surgeons conducted a second survey in 1995, which led the RUC to make some adjustments in the recommended work RVUs. In addition, the American Association of Neurological Surgeons/Congress of Neurological Surgeons identified five more misvalued codes that had not been mentioned in its original comments.

RUC Evaluation/Recommendation: The RUC evaluated the approach used to calculate the recommended work RVUs and considered it to be reasonable. There was some discussion of ''lumping'' vs. ''splitting,'' because the American Association of Neurological Surgeons/Congress of Neurological Surgeons' methodology of measuring intensity ''splits'' it out from overall work. On the other hand, the time periods used by the American Association of Neurological Surgeons/Congress of Neurological Surgeons were the same as those used by Harvard, and the time estimates were based on objective data, not on surgeons' opinions about how much time they spend doing each component of work. In fact, for a number of the services studied by the American Association of Neurological Surgeons/Congress of Neurological Surgeons, the resulting work RVUs tended to validate the final work RVUs from the Harvard study. For example, CPT code 61480 (Craniectomy, suboccipital; for mesencephalic tractotomy or pedunculotomy) currently has 16.77 work RVUs, but the final Harvard work RVUs for the service are 25.55, and the neurosurgery study

produced a recommended 25.03 work RVUs.

The effort appeared to the RUC more as an attempt to bring a higher degree of precision to the work RVUs for neurosurgery than to split work into more components in order to inflate the work RVUs. The recommended reductions in some higher frequency codes bolstered this perception (for example, CPT code 63030 (Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and/or excision of herniated intervertebral disk; one interspace, lumbar) was reduced from 12.11 to 11.10 work RVUs and had a frequency of 29,103 in 1994). In addition, a number of very low frequency services, including some pediatric codes, were included in the analysis and recommendations (for example, CPT code 61480 (Craniectomy, suboccipital; for mesencephalic tractotomy or pedunculotomy), which had zero claims in 1994). Services that are both highly specialized and very infrequently furnished may not have received sufficient attention in the Harvard study.

To evaluate the results of this approach, the RUC workgroup, which included a general surgeon, an ophthalmologist, and a psychiatrist, first selected a number of the codes and calculated two ratios: (1) recommended total work RVUs/intraservice time, and (2) recommended total work RVUs/total time. The results of this analysis were very consistent with one another and with other codes with work RVUs, with nearly all of the codes having a ratio of work RVUs to total time of about 0.05 and ratios of work RVUs to intraservice work time of 0.10 to 0.14. The highest intraservice work ratio was 0.178 for CPT code 61700 (Surgery of intracranial aneurysm, intracranial approach; carotid circulation), with 48.30 recommended work RVUs. The results were considered appropriate because of the extremely complex and difficult nature of the service, when compared both to other codes within the family of intracranial vascular codes and to other major neurosurgical services.

The RUC then selected several of the codes for comparison with codes on the multiple points of comparison with which they were familiar:

- CPT code 61682 (Surgery of intracranial arteriovenous malformation; supratentorial, complex), with 59.47 recommended work RVUs, was compared with CPT code 33870 (Transverse aortic arch graft), which has 37.74 work RVUs. This service involves the surgical efforts to obliterate and remove a congenital vascular malformation from within the brain, frequently deep within a cerebral hemisphere. Many of the issues that contribute to the high complexity of CPT code 61700 also apply to this service, although preservice and postservice work complexity is somewhat lower. This service requires 420 minutes of intraoperative time, however, compared to 270 minutes for CPT code 61700.
- CPT code 67107 (Repair of retinal detachment), with 13.99 work RVUs, was compared to CPT code 61875 (Implantation of neurostimulator electrodes), with 13.79 recommended work RVUs. The intraservice work ratio for retinal detachment is 0.13 and the total work ratio is 0.049; for the neurosurgery code the intraservice work ratio is 0.115 and the total work ratio is 0.04. The ratio comparisons and the work and time involved in each service appear to be correct. CPT code 67107 involves 107 minutes of intraoperative time, and CPT code 61875 involves 120 minutes of intraoperative time. The final Harvard work RVUs for CPT code 61875 are 14.06.
- The comparison of CPT code 61702 (Surgery of intracranial aneurysm), with 46.31 recommended work RVUs, to CPT code 48150 (Partial removal of pancreas), with 42.53 work RVUs, also seems correct, since CPT code 61702 involves surgery of a vertebral or basilar artery aneurysm and has the same high levels of mental effort, technical skill, and stress/risk outlined above for CPT code 61700.

The RUC concluded that the neurosurgery study produced work RVU recommendations that are considerably more precise than the current work RVUs for these services.

Three of the codes surveyed by the American Association of Neurological Surgeons/Congress of Neurological Surgeons were also the subject of other comments and were therefore reviewed individually by the RUC:

- For CPT code 61791 (Creation of lesion by stereotactic method, percutaneous, by neurolytic agent (e.g., alcohol, thermal, electrical, radiofrequency); trigeminal medullary tract) with 7.29 work RVUs, the commenters recommended an increase to 13.29 work RVUs because the service is substantially more difficult than CPT code 61790, which is the same service performed on the gasserian ganglion, with 10.31 work RVUs. The RUC recommended a somewhat higher increase to 13.99 work RVUs rather than the 13.29 work RVUs recommended by commenters. The Harvard work RVUs for this service are 14.28.
- For CPT code 62290 (Injection procedure for diskography, each level; lumbar), with 3.58 work RVUs, we received a comment recommending a reduction to 2.05 work RVUs, which would be 25 percent more than the work RVUs for CPT code 62289 (Injection of substance other than anesthetic, antispasmodic, contrast, or neurolytic solutions; lumbar or caudal epidural (separate procedure)). The American Association of Neurological Surgeons/ Congress of Neurological Surgeons argued that CPT code 62289 is a poor reference for CPT code 62290 because the techniques are not very comparable and the targets and risks are different. The RUC agreed with this argument. The American Association of Neurological Surgeons/Congress of Neurological Surgeons stated that CPT code 62291 (Injection procedure for diskography, each level; cervical), with 2.91 work RVUs, is a better reference. The specialty society stated that CPT code 62290 should be reduced from 3.58 to 3.00 work RVUs to allow for the fact that lumbar diskography is inherently more difficult than cervical diskography and still maintain the correct rank-order of the current work RVUs.
- For CPT code 64443 (Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, each additional level), with 1.35 work RVUs, commenters recommended the code be valued at 50 percent of CPT code 64442 (Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, single level) because it is an add-on code and does not involve preservice and postservice work. Although the general rule is that about 50 percent of the work is intraservice work and 50 percent is preservice and postservice work, this, however, does not hold true for many minor procedures. In fact, the work RVUs for CPT code 64443 were already reduced significantly when the global period was changed in 1994. For these two codes (CPT code 64442 and CPT code 64443), the ratio is approximately 61 percent. The RUC recommended, therefore, that the work RVUs for CPT code 64443 be reduced to 0.98 from 1.35, but not to 0.78, as recommended by the commenter.

The RUC believed it is important to add all of the codes identified by the American Association of Neurological Surgeons/Congress of Neurological Surgeons to the 5-year review in order to have correct rank-ordering of codes across neurosurgical procedures. In addition, the RUC considered recommending that all the neurosurgery codes in the 5-year review be rescaled so that the net effect of the changes in work RVUs would be zero to make the

changes work-neutral. Although the American Association of Neurological Surgeons/Congress of Neurological Surgeons recommended changes in a very large number of codes, the overall impact of the recommendations is relatively small. An AMA analysis using 1994 frequency data found that acceptance of the recommended changes would only increase Medicare expenditures by about $3.8 million. The RUC recommended, therefore, that all the suggested changes be adopted without any rescaling.

HCFA Decision: We have accepted all but one of the RUC recommendations for the neurosurgery codes: *CPT code 61793 (Stereotactic focused proton beam or gamma radiosurgery).*

The RUC recommended an increase in work RVUs from 16.70 to 17.88. We disagree with this recommendation, which is based in large part on a calculation of the intraservice time components by the American Association of Neurological Surgeons rather than on the surveyed time. The calculated time was 210 minutes, while the surveyed time was 120 minutes. We are concerned that the calculated intraservice time includes specific elements that are described and reported by codes in the radiation oncology section of CPT. For example, the calculated time includes 15 minutes for ''stereotactic images processed by dose planning computer using dose planning module for optimal dosimetry'' and 15 minutes for ''planned dose tested in radiosurgical device to assure correct targeting and dosimetry.'' In view of our concern, we have decided to maintain the current 16.70 work RVUs.

10. Ophthalmology

The American Academy of Ophthalmology and the American Optometric Association responded to comments requesting that the work RVUs for 11 cataract-related codes be reduced. In addition, the American Academy of Ophthalmology surveyed several codes and recommended work RVU increases. Arguments supporting increased work RVUs relied on surveys, comparisons to cross-specialty codes, and rationale claiming that procedures have changed and now require adjusted work RVUs. The response rates and resulting samples were of sufficient size to produce valid results.

Generally, the RUC found the data, comparisons, and arguments convincing. The RUC was looking for compelling evidence that the procedure had changed, the patient population had changed, or the code had been originally undervalued or overvalued. When the RUC recommended different work RVUs, it typically attempted to reconcile new survey data and rationale with Harvard data. This approach produced final recommended work RVUs below those recommended by the specialty society. In all, the RUC proposed that the work RVUs be reduced for 7 codes, increased for 12 codes, and maintained at the current value for 29 codes.

HCFA Decision: We have accepted all but one of the RUC recommendations for the ophthalmology codes: *CPT code 66821 (Discission of secondary membranous cataract (opacified posterior lens capsule and/or anterior hyaloid); laser surgery (e.g., YAG laser) (one or more stages)).*

We referred a comment to the RUC which stated that this service is overvalued and that the work RVUs should be reduced to 2.30. The basis of this recommendation was that the technical skill and intensity of work for CPT code 66821 are significantly lower than for CPT code 66820 (Incision, secondary cataract). In addition, the intraservice time is less, and the number of outpatient visits during the global period are fewer.

The RUC reviewed the survey data which showed a median intraservice time of 11 minutes and median work RVUs of 3.42. The intraservice skill and complexity were considered to be comparable to those of CPT code 66761 (Revision of iris) and CPT code 67031 (Laser surgery, eye strands). The RUC concluded that the survey data and comparisons were sufficiently compelling to reject the commenter's recommended decrease in work RVUs. The RUC recommended that the current work RVUs be maintained.

We disagree. On a related matter, we had forwarded a comment to the RUC that the cataract codes were overvalued because the procedures typically can be performed in a shorter period of time than the 54 minutes in the Harvard data. However, we accepted the surveyed median intraservice time of 50 minutes presented to the RUC for cataract surgery as the basis for not reducing the work RVUs. Applying the intraservice work intensity of the cataract procedure (CPT code 66984) to the 11 minutes of surveyed intraservice time for the YAG laser procedure results in 2.15 work RVUs, which we are proposing for CPT code 66821. We believe this comparison is appropriate because we do not believe that the intensity of a YAG laser procedure is greater than the intensity of a cataract extraction.

For information on eye visit codes, see the discussion of the evaluation and management codes in section II.C.1. of this notice.

11. Imaging

The RUC considered public comments submitted by the American College of Radiology, the American College of Cardiology, and the Society for Cardiovascular and Interventional Radiology. The American College of Radiology cited nine radiology codes that it believed are misvalued. The American College of Radiology noted that a multidisciplinary approach was used to identify these nine procedures. Specifically, radiologists in each specialty of radiology were asked to review the procedures they perform and determine whether or not the work RVUs reflect the difficulty of the procedure. A multidisciplinary panel of radiologists and the American College of Radiology Commission on Economics then reviewed the selected procedures. The panel determined that it could present an adequate case for reconsideration of the work RVUs for these nine procedures.

We received many comments which generally stated that radiology codes were overvalued. The most common reasons given were the following: Plain film studies are relatively overvalued compared to more complex radiographic procedures; ultrasound studies are overvalued; and the most common computerized axial tomography and magnetic resonance imaging studies are overvalued. A comment also suggested that plain film studies appeared overvalued relative to evaluation and management services. Other comments suggested that simple planar procedures such as aortography should be decreased to equate the readings of these films with equivalent noncontrast studies; magnetic resonance imaging should be revalued to reflect easier interpretations with contrast material; and both magnetic resonance imaging and computerized axial tomography scans should be similar for all anatomic locations.

As part of its report outlining the work RVU recommendations to the RUC, the American College of Radiology prepared a comprehensive rebuttal of the comments. Specifically, the American College of Radiology noted that the current physician work RVUs for plain film studies accurately reflect the work involved in the procedure and, therefore, should be maintained. Contrary to the comments, the RUC concluded, plain film studies are not overvalued relative to more complex radiographic studies. The American College of Radiology survey data supported the fact that the

interpretation of plain film studies requires more time than the evaluation and management CPT code 99212 (Office/outpatient visit, established patient) to which those studies were most often compared.

The RUC also recommended that the current work RVUs assigned to codes involving the use of contrast material should be retained since they require more physician work than those not involving the use of contrast. When contrast is used, physicians must interpret more images, with a concomitant increase in work. Time data and intensity analysis prepared by the American College of Radiology confirm the fact that the current work RVUs for computerized axial tomography scans reflect the physician work involved. The American College of Radiology also noted that the number of images varies by the site that is being imaged during a computerized axial tomography scan, which rebuts the commenters' notion that the work RVUs for this scan be the same regardless of site. The American College of Radiology reported that the presence of contrast material increases the physician work of magnetic resonance imaging since the physician must visualize the anatomy in greater detail, therefore, increasing the complexity of the interpretation.

RUC Evaluation/Recommendation: The RUC believed that extensive evidence presented by the American Society of Radiology compellingly supported maintaining the current work RVUs. The RUC agreed with all of the recommended changes based on evidence that was presented by the American College of Radiology. For the codes that were presented by the Society for Cardiovascular and Interventional Radiology, although the RUC agreed that the services were undervalued, the RUC did not believe that the Society for Cardiovascular and Interventional Radiology presented compelling evidence for the requested increases. Instead, the RUC suggested increased work RVUs, but lower than the specialty society recommended.

HCFA Decision: We have accepted all of the RUC recommendations for the imaging codes.

12. Cardiothoracic and Vascular Surgery

The American Society of General Surgeons and the Society of Thoracic Surgeons stated that the Harvard study did not appropriately value lung procedures. In particular, the commenters stated that the Harvard study had estimated, rather than directly measured, preservice and postservice times and that the current RVUs do not reflect the physician work involved in maintaining proper hemodynamics during initiation of anesthesia, stabilizing the patient for transfer to the recovery room, and accumulating sufficient evidence that immediate reoperation or other intervention for bleeding, impaired circulation, or air leak is not needed. The Society of Thoracic Surgeons also commented on several cardiac operations that it believed have become more complex over time and recommended slight increases in 11 coronary artery bypass graft procedures.

Generally, the RUC did not consider evidence that the Society of Thoracic Surgeons provided sufficiently compelling to support increases in the work RVUs for the thoracic procedures identified in its comment. Also, the RUC has already reviewed most of these services, and any changes in work since the Harvard study would have been reflected in the RUC's 1993 recommendations. However, the RUC agreed that increases were warranted in two of the cardiac surgery procedures, CPT code 33426 (Repair of mitral valve) and CPT code 33875 (Thoracic aorta graft), which have become more complex over the last 5 years.

The International Society for Cardiovascular Surgery/The Society for Vascular Surgery described a number of problems in the current work RVUs for vascular surgery procedures, many of which are the result of the lack of any distinct study of vascular surgical procedures or vascular surgeons in the Harvard study. This lack of a study could have particularly deleterious effects for the Medicare program because Medicare patients account for an exceptionally high percentage of total patients seen by vascular surgeons. The commenter stated, for example, that no vascular surgeons were included in the Harvard Technical Consulting Groups. It also described errors in the Harvard vignettes, which could have resulted from the absence of vascular surgeons on the Harvard Technical Consulting Groups and led to incorrect data. The commenter also noted that some adjustments were made in these services for the 1993 work RVUs based on an Abt study, but that further refinements are needed. Finally, the commenter reported the results of an effort to obtain intraoperative times from 10 hospitals for 9 vascular procedures and 11 other codes selected from the list of reference procedures. This study found that, while data on nonvascular surgeries corresponded closely to existing Harvard and RUC data for the services, for vascular surgeries the current data were 20 percent lower than the hospital reported times. The American Society of General Surgeons also commented on two vascular surgical procedures, CPT code 34201 (Removal of artery clot) and CPT code 35654 (Artery bypass graft).

The RUC found that the International Society for Cardiovascular Surgery/Society for Vascular Surgery offered compelling reasons to review the current work RVUs for selected vascular surgery procedures. The RUC did not adopt the particular approaches or proposed RVUs recommended by the International Society for Cardiovascular Surgery/Society for Vascular Surgery, however.

The Society for Cardiovascular and Interventional Radiology, the American College of Surgeons, the American Society of Hematology, the American Thoracic Society, the International Society for Cardiovascular Surgery/Society for Vascular Surgery, and the American Society of General Surgeons commented on nine other cardiovascular procedures.

The RUC agreed with the Society of Cardiovascular and Interventional Radiology that there are anomalies in the current work RVUs for CPT codes 36215, 36218, 36245, and 36248, all of which are codes for placing a catheter in an artery. The RUC recommended an adjustment in the current work RVUs for CPT codes 36215 and 36245 to make them equal and recommended a change in the global period for CPT codes 36218 and 36248 to maintain consistency within this family. The RUC adopted the increase recommended by the general and vascular surgeons for CPT code 36830 (Creation of arteriovenous fistula by other than direct arteriovenous anastomosis (separate procedure); nonautogenous graft). For the remainder of the codes in this group, the RUC did not believe the commenters presented sufficient evidence to support an increase and recommended that the current work RVUs be maintained.

HCFA Decision: We have accepted all of the RUC recommendations for the cardiothoracic and vascular surgery codes.

13. Pathology and Laboratory Procedures

Commenters identified numerous pathology and laboratory procedure codes as being overvalued.

The review of pathology and laboratory procedures primarily focused on the codes that commenters identified as overvalued. In response to the comments, the College of American Pathologists provided recommendations to the RUC to maintain or increase the RVUs for these codes. Based on survey results, comparisons to the final

Harvard study results, comparisons to key reference services, and analysis of Medicare claims data, the RUC believed that the College of American Pathologists provided compelling evidence for maintaining the current work RVUs of these procedures and, for CPT code 86327 (Immunoelectrophoresis assay), for increasing the work RVUs from their current level.

Comment: The American Society of Hematology provided recommendations to the RUC on the following five codes:

CPT code	Descriptor
36520	Therapeutic apheresis (plasma and/or cell exchange).
38230	Bone marrow harvesting for transplantation.
85390	Fibrinolysins or coagulopathy screen, interpretation and report.
86077	Blood bank physician services; difficult cross match and/or evaluation of irregular antibody(s), interpretation and written report.
86079	Blood bank physician services; authorization for deviation from standard blood banking procedures (e.g., use of outdated blood, transfusion of Rh incompatible units), with written report.

RUC Evaluation/Recommendation: Based on survey results and comparisons to key reference services, the RUC recommended increasing the work RVUs of all five codes; however, in two instances the RUC did not believe that the specialty society had provided enough evidence to support adopting the increase that the specialty society recommended.

Comment: The Medical Oncology Association of Southern California, Inc. requested increased work RVUs for CPT code 85095 (Bone marrow, aspiration only) and CPT code 85102 (Bone marrow biopsy; needle or trocar).

RUC Evaluation/Recommendation: Since the Medical Oncology Association of Southern California, Inc. presented no evidence to support the comment, the RUC recommended maintaining the current work RVUs of these codes.

HCFA Decision: We have accepted all but two of the RUC recommendations for the pathology and laboratory procedures codes: *CPT code 85390 (Fibrinolysins screen).*

The current work RVUs are 0.37. We received conflicting comments on this code. One commenter recommended that the work RVUs be reduced on the basis that a fibrinolysin screen requires less time and expertise than the interpretation of CPT code 71021 (Chest x-ray), which is assigned 0.22 work RVUs with a Harvard study time of 5 minutes. Another commenter requested an increase to 1.19 work RVUs. The commenter compared this service to CPT code 88331 (Pathology consult in surgery), which has 1.19 work RVUs and a Harvard time of 20 to 24 minutes. The RUC noted that this procedure has never been surveyed and the current work RVUs were established by HCFA. The RUC agreed that the physician work of furnishing this service has changed during the past few years. The clinical problems presented by patients are more complex, the tests are more technical, and the physician is required to perform more tests. However, the RUC did not believe that these changes warranted an increase to 1.20 work RVUs. Instead, the RUC believed that the service is comparable in physician work to the key reference service CPT code 88305 (Tissue exam by pathologist), which has 0.75 work RVUs. Therefore, the RUC recommended 0.75 work RVUs.

Clinical laboratory tests are covered by the Medicare program and paid for under the clinical laboratory fee schedule; performance of the test itself does not require the services of a physician and does not have physician work associated with it. However, we have recognized that there are a limited number of clinical laboratory codes for which it is almost always necessary for the laboratory physician to furnish an interpretation, and we have assigned 0.37 work RVUs to these interpretations. We are not persuaded that the work has changed over time. The vignette used to survey this code appeared to represent service well beyond interpretation of a single test and seemed to describe a typical consultation. CPT code 80502 (Lab pathology consultation) describes the surveyed vignette and is valued at 1.33 work RVUs, which is similar to the 1.20 work RVUs from the RUC survey. Therefore, we have retained the current 0.37 work RVUs for CPT code 85390.

CPT code 86327 (Immunoelectrophoresis assay).

The current work RVUs are 0.37. Pathology interpretation of laboratory tests was originally valued at 0.37 work RVUs. (See comment for CPT code 85390 above.) We are not persuaded that the work has changed over time. The vignette used to survey this code appeared to represent service well beyond interpretation of a single test and seemed to describe a typical consultation. CPT code 80502 (Lab pathology consultation) describes the surveyed vignette and is valued at 1.33 work RVUs, which is similar to the 1.20 work RVUs from the RUC survey.

14. Psychiatry

The American Psychiatric Association and the American Academy of Child and Adolescent Psychiatry submitted comments on psychiatric services. Both societies commented that the current physician fee schedule has not preserved the original work-value relationships developed by Harvard. It was their view that if the relative value of the code for 45 minutes of psychotherapy (CPT code 90844) is changed, all other values in the psychiatric section of CPT should be changed to preserve the original relationship with the psychotherapy code. The societies contended that our failure to maintain the relative relationships among the psychiatric codes that were surveyed by Harvard has resulted in the undervaluation of all psychiatric services.

The American Psychiatric Association made five other specific comments:

- Psychotherapy service CPT codes 90842, 90843, and 90844 represent three bundled services (continuing medical evaluation, medication management, and psychotherapy).
- Psychotherapy codes that are time dependent, especially CPT code 90844, have inappropriately low work RVUs as a result of undervaluing of time as a dimension of work.
- The nature of psychotherapy services has become more intensive since the development of the existing work RVUs.
- The preservice and postservice work for psychiatric services is undervalued.
- CPT code 90844 is inappropriately linked to CPT code 99204 (Office or other outpatient visit for the evaluation and management of a new patient). The American Psychiatric Association argued in its comments that CPT code 90844 requires that the physician spend 45 to 50 minutes of face-to-face time with a patient. In contrast, CPT code 99204 can routinely last less than 45 minutes.

Based on a combined survey of 250 physicians, clinical psychologists, and nurses, the American Psychiatric Association presented recommendations for 18 psychiatric codes. The American Psychiatric Association, in its comments and during its presentation to the RUC, presented the following evidence to support increasing the work RVUs of the psychiatric codes:

- Patient type and mix have changed dramatically during the past 5 years. The American Psychiatric Association reported that before 1990, for the most part, ''stable'' patients were seen in an office outpatient setting. Patients that

were considered unstable, and otherwise hard to manage, were treated as inpatients, allowing the physician to coordinate with the hospital staff, if necessary. In the past, patients tended to seek treatment earlier and physicians were able to make referrals to psychiatrists earlier. The onset of managed care has increased the likelihood that many patients are referred to nonphysician mental health providers, which has translated into psychiatrists treating only the severely ill patient.

- Decreasing inpatient hospital admission has resulted in increased patient morbidity. Again, the American Psychiatric Association noted that shifting insurance industry patterns have played a significant role in this trend. Although many insurance policies offer mental health coverage, the coverage is often very restrictive. For example, most policies have strict limits on the number of inpatient hospital days. Many managed care policies have shifted away from long-term psychotherapy in favor of short intermittent treatment therapies.
- Since many more patients are seen on an outpatient basis, there is an increasing amount of coordination of care with other providers. The American Psychiatric Association noted that the time spent dealing with coordination of care issues has resulted in an increase of physician preservice and postservice work.
- During the past 5 years, new, highly sophisticated neuroleptic and antidepressant medications have been introduced. The American Psychiatric Association noted that, because of the advances in psychopharmacology, a greater number of individual psychotherapy patients will likely utilize these medications than was the case 5 years ago. The greater reliance on these medications has increased the complexity of the medical decision making during an individual psychotherapy visit. Many of these new drugs require constant monitoring, such as weekly blood monitoring in the case of Clorazil. The failure to monitor these drugs appropriately could result in adverse side effects and possibly death.
- The psychotherapy codes have specific times incorporated into the CPT descriptor that do not accurately reflect the current practice of psychiatry. The American Psychiatric Association noted that the practice of psychiatry has changed significantly since the psychotherapy codes were surveyed during the Harvard study; therefore, the current RVUs should be increased to reflect this change.

The RUC reviewed 18 services in the psychiatry section of CPT. For 13 of those services, the RUC recommended no change from the current work RVUs. For the other five services, the RUC believed that the five points cited by the American Psychiatric Association provide a compelling argument for increasing the work RVUs from their current levels. The RUC also concluded that the survey vignettes that the specialty society used describe the ''typical patient'' in 1995. In two instances, a commenter recommended lowering the current work RVUs of psychiatric services. In both instances, the RUC concluded that the specialty society provided compelling evidence for maintaining the current work RVUs for those codes.

HCFA Decision: We agree with the RUC recommendations not to change the current work RVUs for 13 psychiatric services. We disagree with the RUC that there is compelling evidence to increase the work RVUs of the remaining 5 psychiatric services (CPT codes 90801, 90843, 90844, 90853, and 90855). As a result, we will maintain the current work RVUs for all 18 psychiatric services. The 1996 work RVUs are slightly higher than the 1995 work RVUs because, effective January 1, 1996, we bundled the work RVUs for CPT codes 90825 and 90887 across CPT codes 90801, 90820, 90835, 90842 through 90847, and 90853 through 90857.

15. Other Medical and Therapeutic Services

Comment: We received isolated comments regarding purportedly overvalued miscellaneous diagnostic and therapeutic procedures such as biofeedback, esophageal motility studies, pulmonary testing, and intralesional chemotherapy.

RUC Evaluation/Recommendation: Based on recommendations from the National Association of Medical Directors of Respiratory Care, the American Thoracic Society, the American College of Chest Physicians, the Joint Council of Allergy, Asthma and Immunology, and the American Academy of Electrodiagnostic Medicine, the RUC recommended maintaining the current work RVUs of most of the procedures that were identified by commenters. These recommendations were based on survey results, comparisons to final Harvard study results, comparisons to key reference services, and analysis of Medicare claims data.

Comment: The American Academy of Neurology submitted a comment on CPT code 95951 (Monitoring for identification and lateralization of cerebral seizure focus by attached electrodes; combined electroencephalographic (EEG) and video recording and interpretation, each 24 hours) recommending an increase in work RVUs from 3.80 to 6.75.

RUC Evaluation/Recommendation: The requested work RVUs were amended to 6.00 based on results of the survey by the American Academy of Neurology. The RUC held the view that the survey results provided sufficient evidence to warrant increasing the work RVUs for the procedure. This recommendation was based on a survey of 60 neurologists, comparisons to final Harvard study results, and comparisons to key reference services.

Comment: The Medical Oncology Association of Southern California, Inc. submitted work RVU recommendations for the following CPT codes:

CPT code	Descriptor
96440	Chemotherapy administration into pleural cavity, requiring and including thoracentesis.
96445	Chemotherapy administration into peritoneal cavity, requiring and including peritoneocentesis.
96450	Chemotherapy administration into CNS (e.g., intrathecal), requiring and including lumbar puncture.

RUC Evaluation/Recommendation: The RUC recommended maintaining the current work RVUs for these three chemotherapy codes. These recommendations were based on the fact that the RUC had recently reviewed one of the procedures and the fact that Medicare Part B data showed that the other chemotherapy procedures are infrequently performed.

HCFA Decision: We have accepted all but one of the RUC recommendations for other medical and therapeutic services: CPT code 90911 (Anorectal biofeedback).

The current work RVUs are 2.15. A commenter recommended a reduction to 0.93 work RVUs since this procedure lacks the intensity of CPT code 90937 (Hemodialysis, repeated evaluation) or CPT code 90801 (Psychiatric interview). CPT code 46606 (Anoscopy and biopsy) requires less time but presents a greater risk than CPT code 90911. The RUC recommended retaining the current work RVUs since the procedure is lengthy, taking a minimum of 30 minutes but typically lasting 45 to 60 minutes. The RUC's view was that the procedure is more intense and requires more work than CPT code 46606. The RUC considers that this procedure is

similar in its intensity to CPT code 90801.

In our assessment, the RUC recommendation is too high. Other biofeedback procedures are valued at 0.89 work RVUs. This procedure involves little physician work and is similar to other biofeedback procedures; therefore, we have assigned 0.89 work RVUs.

16. Speech/Language/Hearing

Comment: The American Speech-Language-Hearing Association and the American Academy of Audiology submitted comments on the following CPT codes:

CPT code	Descriptor
92506	Speech & hearing evaluation.
92507	Speech/hearing therapy.
92508	Speech/hearing therapy.
92541	Spontaneous nystagmus test.
92542	Positional nystagmus test
92544	Optokinetic nystagmus test.
92545	Oscillating tracking test.
92546	Sinusoidal rotational test.
92585	Auditory evoked potential.

In general, these commenters expressed concern regarding our payment policies for audiologists and speech pathologists. These organizations stated that the current practice expense component does not accurately reflect the technical work that is involved in performing the services. In addition, the American Academy of Audiology noted that the current physician fee schedule includes zero work RVUs for audiology services, even though the Harvard study included physician work RVUs for these codes.

The American Speech-Language-Hearing Association and the American Academy of Otolaryngology—Head and Neck Surgery, Inc. had originally wanted to survey these services; however, they have now requested that the codes be withdrawn from further consideration.

RUC Evaluation/Recommendation: A majority of these codes have been revised for CPT 1996, and the RUC submitted work RVU recommendations to us in May 1995. The distinction between physician work RVUs and work recognized as practice expenses such as the labor component of audiology services is addressed in section II.C.5. of this notice. Because interim work RVUs, which are subject to public comment, were established in January 1996, and final work RVUs will be established for 1997, we are not considering these codes in the 5-year review.

Comment: Commenters stated that CPT code 92512 (Nasal function studies (e.g., rhinomanometry)) is similar to CPT code 94060 (Bronchospasm evaluation: spirometry as in 94010, before and after bronchodilator (aerosol or parenteral) or exercise), with 0.31 work RVUs.

RUC Evaluation/Recommendation: The RUC noted that nasal function studies are performed to evaluate the normal or abnormal function of the nose. Rhinomanometry is a nasal function study that measures the flow and pressure of air through the nose. It enables the physician to assess the degree of obstruction, if any, that may be present in the nasal passages. Anterior rhinomanometry measures air flow in the front of the nasal cavity and is performed by inserting flexible air tubes into each nostril. The tubes are connected to a device that measures the amount and pressure of air that flows through them as the patient breathes. The physician records measurements of air flow and, from these, calculates the degree of obstruction. CPT code 94060 is a distinctly different test, which uses spirometry to measure exhaled gas and record the time of collection. CPT code 94060 is less intense and requires less physician time than CPT code 92512. Therefore, the RUC recommended that the current work RVUs be maintained.

HCFA Decision: We have accepted all of the RUC recommendations for the speech, language, and hearing codes.

C. Other Comments

1. Evaluation and Management Services

We received numerous comments requesting review of evaluation and management services. Most of the comments focused on office visits, hospital visits, and consultations. The commenters offered three major reasons for requesting that the work RVUs for these evaluation and management services be reviewed:

- The physician work involved in these services has increased since the initial Harvard study of RVUs was conducted. As a mechanism to control costs over the past 10 years, there has been increased pressure to treat patients in the office rather than the hospital or emergency room. Patients are being discharged from the hospital sooner. As a result, the typical patient seen in the office and in the hospital is more complex than the patient seen in the mid-1980's. Also, the preservice and postservice work has changed due to the following factors:

+ Increased documentation requirements.

+ Time and effort required for obtaining or providing authorizations for tests and referrals.

+ Higher patient expectations and an increasingly well informed patient population.

+ Increased coordination with other health professionals and family members.

+ Increased patient education regarding issues such as fall prevention and adverse drug reactions.

- Evaluation and management services are undervalued relative to most other procedures. The highest level evaluation and management services require a ''comprehensive examination'' and ''medical decision making of high complexity,'' yet the assigned work RVUs for these services are lower than for procedures that involve less time, less mental effort and judgment, and less technical skill and physical effort. An analysis of intraservice work per unit time (intensity) by one commenter found that the intensity of 96 percent of the services paid under the physician fee schedule exceeded the existing intensity of evaluation and management services. The existing intensities were calculated by dividing the work RVUs by the typical time of the CPT codes for evaluation and management services.
- The current CPT codes for evaluation and management services were never directly surveyed or studied in the Harvard RVU study. The Harvard study conducted its survey from 1986 through 1988; the new CPT codes were published in 1992. At the time of the Harvard surveys, evaluation and management services were not defined based on the level of history, examination, and medical decision making. A crosswalk from the old CPT codes to the new CPT codes was used to establish work RVUs. Also, the preservice and postservice work was not directly surveyed, nor was postservice work defined.

We forwarded these comments to the RUC. The RUC agreed with the commenters that an in-depth review of the work involved in office and hospital visits and consultations was warranted. We also referred comments suggesting that the work RVUs for nursing facility visits and home visits should be reviewed.

After reviewing selected evaluation and management services, the RUC found the evidence compelling to recommend increasing the work RVUs for office visits, subsequent hospital visits, and consultations. The RUC made an interim recommendation not to change the work RVUs for the home visits. In developing its

recommendations, the RUC focused principally on the work involved in the evaluation and management services, how the work has changed over time, and how the work is related to the work of other evaluation and management services and non-evaluation and management services. The RUC recommended work RVUs for 39 of the 98 evaluation and management services for which we have assigned work RVUs. When there was not a recommendation, the RUC took the position that the work RVUs did not need to be changed.

As we evaluated the RUC recommendations, we noted several inconsistencies:

- The recommendations significantly alter the existing relationships among all the evaluation and management services without providing compelling evidence that the existing rank order is incorrect.
- The complexity of the service, as described by the level of history, examination, and decision making, did not directly correspond to the recommended work RVUs.
- The survey data were flawed; however, the RUC used the postservice work times that it acknowledges are overstated in its formula to calculate intraservice work intensity. The formula actually calculates something that is more accurately described as total work intensity, that is, total work divided by total time.
- Many of the arguments to increase the RVUs are based on the assumptions that the CPT codes do not adequately describe the service and that the current CPT codes for evaluation and management services were not used in the Harvard surveys.

We believe that maintaining the relationships among the evaluation and management services is important. Therefore, we have examined all 98 evaluation and management services for which we have assigned work RVUs. In assigning work RVUs, we considered the level of complexity of each service and valued the service as described by the CPT code. As the American Academy of Family Physicians noted in its original 5-year review comments, ''valuing a service which requires more effort and more time at a lower level than a 'simple' procedure is inconsistent with the concept of a resource-based relative value scale.'' We believe that this rationale applies within the family of evaluation and management services. We took the survey data into general consideration but also investigated other objective data sources such as the AMA Socioeconomic Monitoring Survey from 1988 and 1994.

If, as the commenters have suggested, the patients are more complex and the postservice work has increased, we should expect to see a change in the number of patient care hours a physician works or in the number of patient visits per week or a change in the level of visit billed. However, data from the AMA Socioeconomic Monitoring Survey as published in *Physician Marketplace Statistics* 1989 and 1994, reveal that the median number of hours a physician works in patient care (51) and the median number of patient visits per week (101) have not changed between 1988 and 1994. The AMA definition of hours in patient care includes activities that we consider to be postservice work. Using these data along with Medicare frequency data and the total service times provided in the RUC recommendations (RUC RVUs/RUC intensities), we calculated that the minimum number of hours in patient care necessary to perform 101 visits per week is 78.5. This discrepancy suggests that the RUC recommendations overestimate the total times by approximately 50 percent.

In reviewing our claims data, we have seen a slight increase in the average number of work RVUs billed within each group of evaluation and management services. For each family of evaluation and management services, we calculated the quarterly average work RVUs since the beginning of the physician fee schedule. The average work RVUs for the family of office/outpatient visit for an established patient (CPT codes 99211 through 99215), have increased from 0.60 to 0.62, a 3.33 percent increase from 1992 to 1995. This increase may reflect the increasing complexity of the Medicare patient or other factors.

National Ambulatory Medical Care Survey data from 1989 and 1993 reveal that the mean face-to-face time for all office visits has increased 13.6 percent. In 1989, the mean time was 16.2 minutes and in 1993 it was 18.4 minutes. Although the change is statistically significant, we question its clinical significance. The data demonstrate, however, that between 1989 and 1993 there has been a shift toward office visits with longer face-to-face times.

We approached review of the work RVUs for the evaluation and management services with three basic assumptions that were integral to the Harvard study and the 1992 work RVU refinement:

- All services within a family of evaluation and management services (that is, office visits) have the same intraservice work intensity.
- The intraservice work times in the CPT code descriptors are correct.
- The preservice and postservice work intensity is a fixed percentage of the intraservice work intensity.

The RUC recommendations do not preserve these basic assumptions except for using the CPT times as an accurate measure of intraservice work times. Despite claiming that it maintained constant intensities within a family, the intensities the RUC calculated are not always consistent. For example, the RUC intensities for CPT codes 99231 through 99233 range from 0.018 to 0.021. It is also unclear whether the RUC calculated preservice and postservice work intensities. If we assume a fixed intraservice work intensity within a family of evaluation and management codes, the RUC recommendations actually assign higher amounts of preservice and postservice work to the lower level codes within an evaluation and management family.

The commenters claim that Harvard did not survey the current evaluation and management codes is technically correct but very misleading. In fact, the current codes were carefully developed to support the clinical vignettes used in, and the results of, the Harvard surveys. An extraordinary amount of work by Harvard, HCFA, the Physician Payment Review Commission, the CPT Editorial Panel, and the specialty societies went into the formulation and testing of the codes. We will continue to value services based on the CPT descriptions. If physicians believe that the definitions do not correctly describe the service as furnished in today's health care sector, they should discuss revising the definitions with the CPT Editorial Panel.

In assigning work RVUs to these services, we defined preservice work as preparing to see the patient, reviewing records, and communicating with other professionals, as appropriate. We defined postservice work as including all coordination of care, documentation, and telephone calls with the patient, family members, or other health professionals associated with the delivery of care to the patient until the next face-to-face evaluation and management service is furnished (excluding separately billable services such as care plan oversight, CPT code 99375). The RUC used these definitions in its survey of evaluation and management services. Unlike the RUC and other commenters, we consider the time and effort required for obtaining and providing authorizations for tests and referrals to be a practice expense

issue because most of the work is done by a physician's staff rather than the physicians themselves.

We agree with the commenters that the intensities of evaluation and management services should be increased to bring them closer to the intensities of procedural services on the physician fee schedule. Therefore, we propose to increase the intensities of the intraservice work, which is that portion of total work furnished either face-to-face with the patient in the office or on the floor or unit for inpatient services. We also agree with the commenters that postservice work has increased over time. We propose to increase the fixed percentage of intraservice work that represents preservice and postservice work. To determine the appropriate amounts to increase these intensities, we have chosen CPT code 99291 (Critical care, first hour) as our anchor because we believe that it is the most intense evaluation and management service. We accepted the RUC recommendation of 4.00 work RVUs for this service.

If we assume that CPT code 99291 is the most intense service, we do not want the work RVUs for the other evaluation and management services to exceed 4.00. Under the current work RVUs, we have an established relationship between CPT code 99291 and CPT code 99213 (Level-three established patient office visit). CPT code 99213 represents a service with 15 minutes of face-to-face time. CPT code 99291 represents an hour of service. We believe that four times the value for CPT code 99213 plus the work RVUs for ventilation management (1.22) and the interpretation of a single view chest x-ray (0.18) should be about equivalent to the work RVUs for critical care. We selected ventilation management and interpretation of a chest x-ray because they are the commonly performed items in critical care that are bundled into the critical care work RVUs. Given this relationship, we used an iterative process and determined that, for most evaluation and management services, if we increased the intraservice work intensity by 10 percent and the fixed percentage of intraservice work (to capture preservice and postservice work) by 25 percent, we would increase the work RVUs for evaluation and management services in a manner that would be consistent with the RUC recommendations while maintaining the existing relationships of the evaluation and management families.

We followed a straightforward methodology in revising the work RVUs. For each code in the following classes: office, new patient; office, established patient; initial hospital care; subsequent hospital care; office consultation; initial inpatient consultation; and follow-up inpatient consultation, we calculated the revised intensity by adjusting the intensities developed in 1992 and described in our November 25, 1992 final notice for the 1993 physician fee schedule (57 FR 55949 through 55951). Those intensities were originally based upon results of the Harvard study and adjusted to maintain linearity in 1992 based on comments received on the 1991 physician fee schedule final rule (56 FR 59502).

The revised intraservice work intensities that have resulted from our 5-year review of evaluation and management services are summarized in the following table.

Code/class	1995 intraservice intensity	1997 intraservice intensity
Office visits, new patient	0.028	0.031
Office visits, established patient	0.028	0.031
Initial hospital visits	0.028	0.031
Subsequent hospital visits	0.028	0.031
Office consultations	0.028	0.031
Initial inpatient consultations	0.022	0.024
Follow-up inpatient consultations	0.028	0.031

Preservice and postservice work is expressed as a percentage of the intraservice work. The following table summarizes the revised preservice and postservice work as percentage of intraservice work for the evaluation and management codes.

Code/class	1995 mean percentage	1997 mean percentage
Office visits, new patient	35.0	43.8
Office visits, established patient	35.1	43.8
Initial hospital visits	30.3	37.9
Subsequent hospital visits	12.5	37.9
Office consultations	34.5	38.5
Initial inpatient consultations	34.5	37.9
Follow-up inpatient consultations	34.9	37.9

To calculate the new work RVUs for the above classes of evaluation and management services as part of the 5-year review, we used the above intraservice work intensities and preservice and postservice work percentages in addition to the CPT times. The intraservice work intensity was multiplied by the typical time of the codes as listed in CPT to determine the new intraservice work values. The preservice and postservice work percentage of this value was added to the intraservice work value to calculate the final work RVUs for the codes. The formula is total work RVUs = (intraservice work intensity) × (CPT time) × (1 + pre/post percentage of intraservice work).

Table 2, ''Evaluation and Management Codes; Five-Year Review—Proposed Relative Value Units,'' lists all of the evaluation and management services and their 1995 and proposed new work RVUs. For each code, we have also provided a measure of complexity. This is a numeric representation of the level of history, examination, and medical decision making associated with the service. These three components of the evaluation and management service are considered the key components in selecting a level of evaluation and management service. For each of the 3 elements, the maximum score is 4; therefore, the most complex service has a score of 12. If the CPT code descriptor does not define the typical level of history, examination, and decision making complexity, as with CPT code 99291 (Critical care, first hour), no score for that code may be computed.

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TABLE 2: Evaluation and Management Codes;
Five-Year Review -- Proposed Relative Value Units

CPT[1]	Complexity Score	CPT Time	1995 work RVUs	RUC Recommendations	Proposed 1997 work RVUs
99201	3	10	0.38	0.39	**0.45**
99202	5	20	0.75	0.79	**0.88**
99203	8	30	1.14	1.20	**1.34**
99204	11	45	1.71	1.80	**2.00**
99205	12	60	2.28	2.41	**2.67**
99211	0	5	0.17	0.25	**0.17**
99212	3	10	0.38	0.50	**0.45**
99213	6	15	0.55	0.80	**0.67**
99214	9	25	0.94	1.27	**1.10**
99215	12	40	1.51	1.90	**1.77**
99217			1.09		**1.28**
99218	8.5		1.08		**1.28**
99219	11		1.75		**2.14**
99220	12		2.41		**2.99**
99221	8.5	30	1.06	1.06	**1.28**
99222	11	50	1.84	1.84	**2.14**
99223	12	70	2.57	2.57	**2.99**
99231	3.5	15	0.51	0.65	**0.64**
99232	7	25	0.88	1.30	**1.06**
99233	10	35	1.25	1.75	**1.51**
99238		<30	1.06		**1.28**
99239		>30	1.75**		**1.75**
99241	3	15	0.54	0.63*	**0.64**
99242	5	30	1.11	1.25*	**1.28**
99243	8	40	1.47	1.9*	**1.71**
99244	11	60	2.23	2.5*	**2.56**
99245	12	80	2.96	3.21*	**3.41**
99251	3	20	0.54	0.63*	**0.66**
99252	5	40	1.13	1.25*	**1.32**
99253	8	55	1.56	1.9*	**1.82**
99254	11	80	2.27	2.5*	**2.64**
99255	12	110	3.14	3.4*	**3.65**
99261	3.5	10	0.36	0.65	**0.42**
99262	7	20	0.74	1.30	**0.85**
99263	10	30	1.16	1.75	**1.27**
99271	3		0.45		**0.45**
99272	5		0.84		**0.84**
99273	8		1.19		**1.19**
99274	11		1.73		**1.73**
99275	12		2.31		**2.31**
99281	3		0.28		**0.33**
99282	6		0.47		**0.55**
99283	7		1.07		**1.24**
99284	9		1.68	1.68	**1.95**
99285	12		2.63	2.63	**3.06**
99291	na	60	3.64	4.00	**4.00**
99292	na	30	1.84	2.00	**2.00**
99295	na	day	16.03		**16.00**
99296	na	day	7.40		**8.00**
99297	na	day	3.84		**4.00**
99301	8.5	30	1.07		**1.28**
99302	10.5	40	1.67		**1.71**
99303	11.5	50	2.29		**2.14**
99311	3.5	15	0.54		**0.64**
99312	7	25	0.89		**1.06**
99313	9.5	35	1.19		**1.51**

TABLE 2: Evaluation and Management Codes;
Five-Year Review -- Proposed Relative Value Units

CPT[1]	Complexity Score	CPT Time	1995 work RVUs	RUC Recommendations	Proposed 1997 work RVUs
99321	3.5		0.71		**0.89**
99322	7		1.01		**1.34**
99323	10		1.28		**1.78**
99331	3.5		0.60		**0.45**
99332	7		0.80		**0.73**
99333	10		1.00		**1.18**
99341	3.5		1.12	1.12*	**1.34**
99342	7		1.58	1.58*	**2.00**
99343	10		2.09	2.09*	**2.67**
99351	3.5		0.83	0.83*	**0.67**
99352	7		1.12	1.12*	**1.10**
99353	10		1.48	1.48*	**1.77**
99354	na	60	1.51		**1.77**
99355	na	30	1.51		**1.77**
99356	na	60	1.44		**1.71**
99357	na	30	1.44		**1.71**
99375			1.73**		**1.73**
99381			1.19		**1.19**
99382	8		1.36		**1.36**
99383	8		1.36		**1.36**
99384	8		1.53		**1.53**
99385	8		1.53		**1.53**
99386	8		1.88		**1.88**
99387	8		2.06		**2.06**
99391	8		1.02		**1.02**
99392	8		1.19		**1.19**
99393	8		1.19		**1.19**
99394	8		1.36		**1.36**
99395	8		1.36		**1.36**
99396	8		1.53		**1.53**
99397	8		1.71		**1.71**
99401	na	15	0.48		**0.48**
99402	na	30	0.98		**0.98**
99403	na	45	1.46		**1.46**
99404	na	60	1.95		**1.95**
99411	na	30	0.15		**0.15**
99412	na	60	0.25		**0.25**
99431	na		1.17		**1.17**
99432	na		1.26		**1.26**
99433	na		0.62		**0.62**
99435	na		1.50		**1.50**
99440	na		2.93		**2.93**

[1] All CPT codes and descriptors copyright 1995 American Medical Association
* interim RUC recommendation
** 1996 RVU

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CPT codes 99201 through 99215 (Office visits).

We disagree with the RUC' contention that the established patient visits are more undervalued than the new patient visits. We also disagree with the RUC recommendations that assign higher work RVUs to established patient visits than new patient visits of the same duration and same level of complexity, for example, the recommended work RVUs for CPT codes 99201 and 99212. Both codes describe 10 minute office visits of equal complexity. However, the RUC has recommended work RVUs for the established patient visit that are 28 percent greater than the recommended work RVUs for the new patient visit. Historically, there has been a consensus in the physician community (confirmed by the Harvard resource-based relative value study) that new patients involve more physician work than established patients. It was for this reason that the CPT Editorial Panel created separate codes for new and established patients.

Finally, we do not agree that the work RVUs for CPT code 99211 (Level-one established patient office visit) should change as the RUC has recommended. Because this service, by definition, does not require the presence of a physician, we are maintaining the 1995 work RVUs.

We adjusted the intraservice work intensity of CPT code 99213 to equal the intensities of the other office visit codes. Rounding due to past budget neutrality adjustments had caused the slight variation in the intraservice work intensities. To account for the possibility that these services were originally undervalued, we increased the intraservice work intensity by 10 percent. Because the package of postservice work, as defined earlier, was not explicitly surveyed by Harvard and we believe that the amount of postservice work has increased since these codes were originally assigned RVUs, we increased the preservice and postservice work percentage of intraservice work for all office visit codes (except for CPT code 99211) by 25 percent.

Using the adjusted work intensities and the times included in the CPT descriptors for the codes, we calculated new work RVUs for all office visits. The new work RVUs are on average 17.1 percent greater than the 1995 work RVUs for CPT codes 99201 through 99215.

CPT codes 99221 through 99239 (Hospital visits).

The RUC assumed that there has been no change in initial hospital visits (CPT codes 99221 through 99223) since the original Harvard study. In fact, the RUC did not survey these services to determine whether its assumption was true. Neither did the RUC suggest that these codes were originally undervalued like other evaluation and management services. The RUC recommended no change in the work RVUs for these codes despite the comments that all evaluation and management services were undervalued relative to procedural services. Our view is that if the office visits were undervalued, so were the initial hospital visits. We approached review of these codes in the same manner as we did the office visit codes.

The RUC recommended that the work RVUs for subsequent hospital visits and follow-up inpatient consultations should be equivalent because the time and complexity of the lowest, middle, and highest levels of subsequent hospital care and follow-up inpatient consultations are very similar. We agree that they are similar; however, they are not identical. Therefore, we have reviewed each group of services on its own merit.

Because the RUC recommended no change in the work RVUs for initial hospital visits and significant increases in the work RVUs for subsequent hospital visits, the rank order of these two groups of evaluation and management services is distorted. We do not agree, as the RUC recommended, that subsequent hospital visits typically require more work than initial hospital visits. The work RVUs recommended for CPT code 99232 (Level-two subsequent hospital visit with a typical time of 25 minutes and a complexity score of 7.0) are 23 percent greater than the recommended work RVUs for CPT code 99221 (Level-one initial hospital visit with a typical time of 30 minutes and a complexity score of 8.5). If we chose to accept the RUC, we would be allowing a shorter, less complex service to be valued higher than a longer, more complex service. This assignment of work RVUs corrupts the integrity of a resource-based relative value system.

We reestablished a fixed intraservice work intensity for initial hospital visits at 0.028. (There was minimal variation across the three levels due to the past budget neutrality adjustments.) This intensity is the same as the intensity for subsequent hospital visits (CPT codes 99231 through 99233). As with the office visits, we increased the intraservice work intensity by 10 percent for both initial and subsequent hospital visits to account for an original undervaluing of the services.

Following the change in the intraservice work intensities, we increased the preservice and postservice work percentage of intraservice work for the subsequent hospital visits to equal that of inpatient consultations. We then increased this percentage for all initial and subsequent hospital visit codes by 25 percent. Using the adjusted work intensities and the times included in the CPT descriptors for the codes, we calculated new work RVUs for all initial and subsequent hospital visits. The new work RVUs are on average 20 percent greater than the 1995 work RVUs for CPT codes 99221 through 99233.

After making these adjustments to the initial hospital visit codes, we equated CPT code 99238 (Hospital discharge day management, 30 minutes or less) to CPT code 99221 (Level-one initial hospital visit) when assigning new work RVUs. The 1995 work RVUs for CPT codes 99238 and 99221 are equal. We have decided to maintain this relationship because there is no evidence to suggest that altering it is appropriate. We did not change the work RVUs for CPT code 99239 (Hospital discharge day management, more than 30 minutes) because the code was new in calendar year 1996. Therefore, there has been no change over time in the service described by this code. Not revising the work RVUs for CPT code 99239 also places it just below CPT code 99222, a similar service of slightly greater duration.

CPT codes 99217 through 99220 (Observation care services).

The RUC did not make any recommendations regarding observation care services. As part of our effort to examine the whole group of evaluation and management services to maintain existing relationships, we reviewed these codes.

In reviewing the work RVUs for CPT code 99217 (Observation care discharge), we noted that this code is relatively equivalent to CPT code 99238 (Hospital discharge day management). To reflect this relationship, we assigned work RVUs to this code equal to the work RVUs assigned to CPT code 99221, a 17.3 percent increase in work RVUs.

The initial observation care services for new or established patients (CPT codes 99218 through 99220) match the services described by the initial hospital visits codes in the level of complexity. Because both sets of codes can only be billed once per date of service and patients in observation status are virtually identical to inpatients, we have made the work RVUs for CPT codes 99218 through 99220 equivalent to the work RVUs assigned to CPT codes 99221 through 99223, thereby increasing the work RVUs by an average of 21.6 percent.

CPT codes 99241 through 99275 (Consultations).

The RUC concluded that the work RVUs for office consultations and inpatient consultations should be ''equivalent at all levels of service except the highest. This preserves the same relationship that exists in the current RVUs for these services.'' We disagree with the RUC that inpatient and office consultations should be equally valued. The 1995 work RVUs for these two families are not equivalent. The Harvard data demonstrated that inpatient consultations are more total work than office consultations, except at the lowest level of service. We believe that these services are not equivalent because the intraservice times are different and the associated postservice work is different (it is greater for inpatient consultations). However, we acknowledge that the level of complexity of the five levels of services for both inpatient and office consultations are the same.

CPT codes 99241 through 99245 (Office or other outpatient consultations).

The work associated with office consultations is more comparable to the work of office visits than to inpatient consultations. Therefore, we standardized the intraservice work intensities to make them equivalent to the 1995 intraservice work intensities of office and hospital visits (0.028). We also adjusted the preservice and postservice work percentage of intraservice work to equal the 1995 percentage for office visits, a slight increase from 34.5 percent to 35 percent.

After these initial adjustments were made, we increased the intraservice work intensities by 10 percent to reflect our belief that the codes may have been originally undervalued. To account for the previously defined package of postservice work, we increased the preservice and postservice work percentage of intraservice work by 10 percent. We did not increase the postservice work percentage by 25 percent as we did with the office visits because we do not believe that the postservice work associated with an office consultation is as great as for an office visit. The postservice work for an office visit includes the ongoing management of the patient until the next face-to-face visit. The postservice work for a consultation involves writing a report for the referring physician without the expectation, in the typical case, that the patient will return to the consulting physician, nor is the consulting physician responsible for any ongoing management of the patient. If the consultation results in a decision to perform surgery, any postservice management of the patient is included in the global surgical package.

CPT codes 99251 through 99255 (Initial inpatient consultations).

We standardized the intraservice work intensities to eliminate the minor variation that resulted from the annual budget neutrality adjustments to the RVUs. Based on the Harvard study, the intraservice work intensity is less than that of the office consultations.

As we did with hospital visits, we increased the intraservice work intensities by 10 percent and the preservice and postservice work percentage of intraservice work by 25 percent. These increases reflect the belief that the services were initially undervalued and that the postservice work, now clearly defined, is greater due to changes over time. Postservice work associated with an inpatient consultation is greater than that for an office consultation because of the amount of work performed off-the-floor by the consulting physician, such as checking on laboratory results and reviewing x-rays. The new work RVUs are, on average, 17.5 percent greater than the 1995 work RVUs assigned to initial inpatient consultations.

CPT codes 99261 through 99263 (Follow-up inpatient consultations).

We disagree with the RUC that these codes should have the same work RVUs as their corresponding level of the subsequent hospital visit codes because the intraservice times are different and consultations and visits are not equivalent services. We agree that the intraservice work intensities and the preservice and postservice work percentages of intraservice work are probably the same for follow-up consultations and subsequent hospital visits. Therefore, we adjusted the preservice and postservice work percentage of intraservice work to match the 1995 percentage of the subsequent hospital visits, a decrease from 34.5 percent to 30.3 percent.

Using the same rationale as for the initial inpatient consultations, we increased the intraservice work intensities by 10 percent and the preservice and postservice work percentages of intraservice work by 25 percent. The new work RVUs for these services are about 14 percent higher than the 1995 work RVUs assigned to these codes.

CPT codes 99271 through 99275 (Confirmatory consultations).

We have decided not to change the work RVUs assigned to these codes. There is less work associated with a confirmatory consultation than a new patient office visit because the patient arrives with a preliminary diagnosis and the consulting physician is expected to provide an opinion or advice only. Not adjusting the work RVUs alters the existing relationships that these codes have with the rest of the evaluation and management services, but we believe that this change is appropriate.

CPT codes 99281 through 99285 (Emergency department services).

We disagree with the RUC's recommendation to maintain the 1995 work RVUs for emergency department services. The RUC did not consider the emergency room physicians' survey of CPT codes 99284 and 99285 adequate to support change. In our view, this survey was no less adequate than some surveys on which the RUC based its recommendations to increase the work RVUs of other evaluation and management codes. For consistency and equity, if other visit codes are being reviewed because of a belief that evaluation and management services were originally undervalued, emergency department services should also be reviewed.

Given that we have assigned increased work RVUs to other evaluation and management services with complexities comparable to those of the emergency room services, we believe that we should make comparable changes to CPT codes 99281 through 99285. We do not have work intensities or CPT times for these codes, thus, we have assigned work RVUs to these services that maintain their proportional relationship with the work RVUs assigned to CPT code 99255, the non-critical care evaluation and management code with the highest work RVUs. The resulting work RVUs reflect an average 16.6 percent increase from the 1995 work RVUs for emergency department services.

CPT codes 99291 through 99297 (Critical care services).

We have accepted the RUC recommendations for CPT codes 99291 and 99292. Because the work RVUs for CPT codes 99293 through 99297 are based on the work RVUs of CPT codes 99291 and 99292, we have adjusted the work RVUs for these neonatal intensive care services. Using the formula articulated in the December 2, 1993 final rule for the 1994 physician fee schedule (58 FR 63675), CPT code 99295 is equivalent to 4 hours of critical care, CPT code 99296 is equivalent to 2 hours of critical care, and CPT code 99297 is equivalent to 1 hour of critical care. Therefore, the new work RVUs for CPT code 99295 (16.00) are calculated as follows: the work RVUs of CPT code 99291 (4.00) plus six times CPT code 99292 (6×2.00). The new work RVUs for CPT code 99296 (8.00) equal the work

RVUs of CPT code 99291 (4.00) plus two times CPT code 99292 (2×2.00). The new work RVUs for CPT code 99297 (4.00) equal the work RVUs of CPT code 99291 (4.00).

CPT codes 99301 through 99313 (Nursing facility services).

In 1992, these codes were evaluated by a multispecialty refinement panel after commenters had requested that we assign work RVUs for nursing facility services that were more commensurate with the work RVUs assigned to the hospital visit codes. The commenters believed that nursing facility visits were most similar to hospital visits in time, intensity, and complexity. In general, the refinement panel agreed with the commenters. Therefore, we need to revise the work RVUs assigned to CPT codes 99301 through 99313 because we have revised the work RVUs for the initial and subsequent hospital visits. In order to maintain the relationship that the refinement panel created, we are assigning new work RVUs to the nursing facility services using the CPT times and the revised intensities for initial and subsequent hospital visits (intraservice intensity = 0.031 and the pre/post fixed percentage of intraservice work = 37.9 percent). Because the 1995 work RVUs resulted from a refinement panel, they do not consistently represent the above relationship. The proposed work RVUs use the intensities for initial and subsequent hospital visits for all the nursing facility codes. As a result, some of the proposed work RVUs are lower than the current work RVUs.

CPT codes 99341 through 99353 (Home services).

Our view is that the current relationship between the work RVUs for home visits and office visits should be maintained. The May 1992 refinement panel equated the home codes to office visit codes. Our position is that a home visit takes longer to furnish than a service with a similar content (level of history, examination, and medical decision making) in an office setting, thus, the home visits are equated with office visits of greater length. Therefore, we assigned new work RVUs to the home visit codes using the following relationships with the new work RVUs for office visits:

New patients:

CPT code 99341=CPT code 99203;
CPT code 99342=CPT code 99204;
CPT code 99343=CPT code 99205.

Established patients:

CPT code 99351=CPT code 99213;
CPT code 99352=CPT code 99214;
CPT code 99353=CPT code 99215.

Because the 1995 work RVUs resulted from a refinement panel, the above relationships are not perfectly represented by the 1995 work RVUs. Therefore, in assigning new work RVUs with the above-described relationship, we have decreased the work RVUs for CPT codes 99351 and 99352.

CPT codes 99321 through 99333 (Domiciliary, rest home (e.g., boarding home), or custodial care services).

The source of the 1995 work RVUs is HCFA. We assumed that these services require less work than home visits because of the availability of personal assistant services. We have taken the average of the relative proportion of the 1995 work RVUs for these codes to the 1995 work RVUs of the home visit codes; on that basis, the domiciliary codes represent two-thirds of the work of the home visits. We are maintaining the existing relationship in the fee schedule. We calculated the new work RVUs for CPT codes 99321 through 99333 by multiplying the work RVUs for CPT codes 99341 through 99353 by 0.667. Specifically, the relationship between the two families is the following:

CPT code 99321=(0.667) CPT code 99341
CPT code 99322=(0.667) CPT code 99342
CPT code 99323=(0.667) CPT code 99343
CPT code 99331=(0.667) CPT code 99351
CPT code 99332=(0.667) CPT code 99352
CPT code 99333=(0.667) CPT code 99353

CPT codes 99354 through 99357 (Prolonged physician service with direct (face-to-face) patient contact).

We did not receive any RUC recommendations for these services. However, the 1995 work RVUs for these codes are based on the work RVUs of three other evaluation and management codes. This relationship was established in the December 8, 1994 final rule for the 1995 physician fee schedule (59 FR 63437 through 63440). To maintain this relationship, we have recalculated the work RVUs for CPT codes 99354 through 99357 using the new work RVUs for CPT codes 99215, 99221, and 99222. The work RVUs for CPT codes 99354 and 99355 are equal to the work RVUs assigned to CPT code 99215. The work RVUs for CPT codes 99356 and 99357 are equal to the average of the work RVUs of CPT codes 99221 and 99222.

We understand that some physicians do not associate the use of prolonged service codes with potential increases in postservice work. Because the work RVUs for these prolonged service codes are based on other evaluation and management services, the use of a prolonged service code increases the potential amount of postservice work associated with the service being furnished to the Medicare beneficiary. The prolonged service codes describe additional face-to-face time but CPT codes 99215, 99221, and 99222 include postservice time. By establishing a clear relationship among these codes, a prolonged face-to-face service may very well have increased postservice work. We believe that the use of these codes adequately describes the total service.

CPT code 99375 (Care plan oversight).

Because the current 1.73 work RVUs resulted from a 1995 refinement panel, we do not see any need to adjust the work RVUs further.

CPT codes 99381 through 99412 (Preventive medicine services).

The work RVUs assigned to these codes were added to the Medicare physician fee schedule in 1995. Because these codes were recently valued, we do not believe that we need to review the work RVUs for them. The intraservice work intensities and the preservice and postservice work have not changed since 1994 when the work RVUs were assigned. Because we are not adjusting the work RVUs, we are changing the rank order of the evaluation and management services. We believe that the new rank order better reflects the relative complexities of the office visits for a sick patient and for a healthy patient. For example, a preventive medicine visit for a 65-year old patient (CPT code 99397) has work RVUs assigned to it that are between a level-four and level-five office visit for an established, sick patient (CPT codes 99214 and 99215). In fact, the work RVUs are only 3 percent less than the new RVUs assigned to CPT code 99215.

CPT codes 99431 through 99440 (Newborn care).

The work RVUs for these services resulted from a multispecialty refinement panel convened in the summer of 1994. The work RVUs for CPT code 99435 were assigned last summer. We do not believe that we need to revise these codes since the work RVUs were recently assigned.

Ophthalmology Codes

We referred comments to the RUC requesting review of the ophthalmology codes for eye visits. The comments compared the work RVUs for these codes to the work RVUs for office visits.

The RUC agreed that a permanent link should be established between the ophthalmological eye examination codes and evaluation and management services. The RUC recommended that

the following relationship be established for assigning work RVUs to the ophthalmological codes:

- CPT code 92002 (Ophthalmological services: medical examination and evaluation with initiation of diagnostic and treatment program; intermediate, new patient) should have the same work RVUs as CPT code 99202 (Level-two office/outpatient visit, new patient).
- CPT code 92004 (Ophthalmological services: medical examination and evaluation, with initiation of diagnostic and treatment program; comprehensive, new patient, one or more visits) should have the same work RVUs as CPT code 99203 (Level-three office/outpatient visit, new patient).
- CPT code 92012 (Ophthalmological services: medical examination and evaluation with initiation of diagnostic and treatment program; intermediate, established patient) should have the same work RVUs as CPT code 99213 (Level-three office/outpatient visit, established patient).
- CPT code 92014 (Ophthalmological services: medical examination and evaluation with initiation of diagnostic and treatment program; comprehensive, established patient, one or more visits) should have the same work RVUs as CPT code 99214 (Level-four office/outpatient visit, established patient).

We agree with the relationships in the RUC recommendation. However, because the work RVUs that we assigned to CPT codes 99202, 99203, 99213, and 99214 are different from the RUC-recommended work RVUs for these codes, the work RVUs that we have assigned to the ophthalmological codes are different from the RUC recommendation. We have assigned the following work RVUs:

CPT code	1995 work RVUs	New work RVUs
92002	1.01	0.88
92004	1.61	1.34
92012	0.82	0.67
92014	1.06	1.10

These work RVUs represent a reduction from the current work RVUs for eye examinations, except for the slight increase in work RVUs for CPT code 92014.

2. Review of Studies by Abt Associates, Inc.

The RUC evaluated the methodologies used by Abt Associates, Inc. before considering the actual recommended work RVUs. The RUC concluded that the Abt studies for orthopaedics and otolaryngology produced correct rank-ordering of codes within the respective specialties, but that an additional study would need to be conducted to produce compelling evidence that the proposed work RVUs were correct. The RUC did not reach any conclusions about the Abt study commissioned by the American Society of Anesthesiologists but indicated that the specialty was still entitled to demonstrate the validity of the study's methodology through the normal RUC update process.

Following the RUC review, the American Academy of Orthopaedic Surgeons, with our concurrence, withdrew its Abt study from consideration and developed a list of 83 codes for which it conducted a survey and submitted individual recommendations. The American Academy of Otolaryngology—Head and Neck Surgery, Inc. provided detailed comments on about 100 codes, in addition to submitting an Abt study. The American Academy of Otolaryngology—Head and Neck Surgery, Inc. evaluated the work of the individually identified codes and made recommendations for work RVUs. The American Society of Anesthesiologists conducted further research to validate its Abt study and presented the results.

3. Pediatrics

Section 124 of the Social Security Act Amendments of 1994 (Public Law 103–432), enacted on October 31, 1994, requires the development of RVUs for the full range of pediatric services. As we noted in our December 8, 1994 final rule, we believe that the work RVUs for the full range of pediatric services are essentially complete (59 FR 63454). We proposed to use the 5-year review process to determine whether there are significant variations in the resources used in furnishing similar services to children and adults.

The comments submitted by the American Academy of Pediatrics responded to our question in the December 8, 1994 final rule of whether the work involved in treating pediatric patients is different from that involved in treating adult patients (59 FR 63454). The American Academy of Pediatrics requested that new codes be added to the CPT to describe different age categories of patients, and that work RVUs be assigned to these codes reflecting the differences in work for patients of different ages. Following adoption of new or revised CPT codes for pediatric services, the RUC will recommend work RVUs.

If, after reviewing the RUC recommendations, we choose to assign work RVUs for these new codes, we will do so in a future annual physician fee schedule update.

4. Anesthesia

Comment: The American Society of Anesthesiologists submitted the report of a study conducted by Abt Associates, Inc. covering all the current CPT codes for anesthesia services. Abt conducted the study to assess the work of anesthesia services in a way that does not rely on the current anesthesia conversion factor.

We base Medicare payments for anesthesia services on allowable base and time units. We have developed a uniform relative value guide in which the base unit per anesthesia code is largely based on the American Society of Anesthesiologists' relative value guide. We published the anesthesia codes and their imputed work RVUs in our December 8, 1994 final rule (59 FR 63456 through 63459) for the 1995 physician fee schedule and in the January 3, 1995 correction notice (60 FR 48 through 49). Anesthesiologists report the actual anesthesia time for each procedure on the claim, and the carrier converts the time to time units. The carriers then multiply the sum of base and time units by the anesthesia conversion factor.

Although the relative values for each service are not based on the Harvard study, we used the Harvard study to determine the anesthesia conversion factor established under the physician fee schedule in 1992. As with other specialties, Harvard first conducted a survey of anesthesiologists of the work involved in a number of anesthesia services, including two procedures performed by anesthesiologists subject to the conventional RVU payment methodology instead of the base and time unit payment methodology. These are CPT code 93503 (Insertion and placement of flow directed catheter (e.g., Swan-Ganz) for monitoring purposes) and CPT code 62279 (Injection of diagnostic or therapeutic anesthetic or antispasmodic substance (including narcotics); epidural, lumbar or caudal, continuous). Two evaluation and management services were also included. Then, Harvard selected cross-specialty links and placed the anesthesia services on the common scale with other specialties. Our use of these results produced a 42 percent reduction in the work RVUs for anesthesia, which was a 29 percent reduction in the anesthesia conversion factor.

The American Society of Anesthesiologists' comments claimed that the Harvard cross-specialty process produced flawed results, and this is the reason for the Abt study. The study involved Abt convening a

multidisciplinary panel of 12 physicians. The panel accepted as correct the average anesthesia times for 15 surgical procedures selected for in-depth study. The panel separated the anesthesia time for each service into five components: preservice work, induction, procedure, emergence, and postservice work. The sum of the times for induction, procedure, and emergence were, in almost all cases, equal to the intraservice times we supplied.

For each component of these reference services, the panel rated the intensity (defined as the intraservice work per unit time (IWPUT)) of the work effort. The panel selected four key procedures, listed in the table below, as the fundamental levels of intensity for use in this comparison, with the unit of time being 1 minute:

CPT code	Descriptor	Intensity (IWPUT)
99204	Office or other outpatient visit for the evaluation and management of a new patient	0.027
62279	Injection of diagnostic or therapeutic anesthetic or antispasmodic substance (including narcotics); epidural, lumbar or caudal, continuous.	0.044
99291	Critical care, evaluation and management of the unstable or critically injured patient, requiring the constant attendance of the physician; first hour.	0.061
33405	Replacement, aortic valve, with cardiopulmonary bypass; with prosthetic valve other than homograft	0.090

The panel then multiplied the intensity values by the time for each component to produce recommended work RVUs on the same scale as other services in the Medicare payment schedule. The 15 studied services represent 45.6 percent of total Medicare payments for anesthesia services.

For illustrative purposes, the panel presented an example for CPT code 00350 (Anesthesia for procedures on major vessels of neck; not otherwise specified) from the Abt study. The surgical CPT code is 35301 (Thromboendarterectomy, with or without patch graft; carotid, vertebral, subclavian, by neck incision).

CPT Code 00350 (Anesthesia for procedures on major vessels of neck; not otherwise specified).

Period	Time (minutes)	Intensity (IWPUT)	Work
Preanesthesia	20	@ 0.027	= 0.54
Induction	25	@ 0.061	= 1.53
Procedure	120	@ 0.044	= 5.28
Emergence	20	@ 0.061	= 1.22
Postanesthesia	20	@ 0.027	= 0.54
Total Work	.....	.....	= 9.11

The panel followed the same process for each of the 15 procedures. The panel performed a regression analysis to extrapolate from these 15 procedures to the other anesthesia services in CPT.

Based on the results of the panel's study, the American Society of Anesthesiologists recommended that the work RVUs for all anesthesia services be increased by 40 percent through an increase of approximately 27 percent in the anesthesia conversion factor.

RUC Evaluation/Recommendation: The RUC's evaluation of the American Society of Anesthesiologists' comment focused initially on the methodology employed by Abt, particularly the use of assigned intensity levels rather than measures of physician work. The RUC suggested to the American Society of Anesthesiologists that, because many anesthesiologists have experience in other specialties, a study could be conducted of anesthesiologists who are board-certified in more than one specialty. In this study, physicians could assess the work involved in reference services compared to the work involved in both anesthesia and nonanesthesia services. This study could validate the approach of assigning intensity levels to the discrete time periods.

The RUC also expressed concern about the particular levels of intensity selected, especially the use of the IWPUT of CPT code 99204 (Office or other outpatient visit for the evaluation and management of a new patient) as the lowest value for any anesthesia work, which is used for the period when the surgeon is performing the operation. The RUC noted that the regression analysis used to expand the study from the 15 services directly studied to the 250 anesthesia codes in the CPT appeared to work well.

In response to the RUC's request, the American Society of Anesthesiologists conducted a RUC-like survey of anesthesiologists who are board certified in more than one specialty. This survey, however, produced even higher work RVUs (median survey values were on average 30 percent higher) than the physician panel produced. The American Society of Anesthesiologists also reconvened the multidisciplinary panel to review the survey results and to discuss the levels of intensity assigned to the codes. The panel used the survey results to refine its previous estimates, but did not adopt the survey results as a substitute for its previous approach. The panel also confirmed its view that the intensity levels selected are correct.

The RUC asked for an additional explanation of the intensity levels selected, particularly the use of 0.027, the IWPUT for evaluation and management services, as the reference service for that period of time when the surgeon is performing the procedure and the patient is anesthetized. The American Society of Anesthesiologists' advisor explained that during this period the anesthesiologist is continuously monitoring the patient, integrating the anesthesia care with what the surgeon is doing, integrating data, making decisions, and doing whatever has to be done for the patient. The panel considered this to be equivalent to face-to-face evaluation and management services.

The RUC concluded that, although this period of time clearly involved two of the components of physician work, time and stress (because of the risk of harm to the patient), this part of each procedure does not involve the same mental effort, judgment, technical skill, and physical effort as an evaluation and management encounter.

Following this review, the American Society of Anesthesiologists made some adjustments to its recommendations by reducing the IWPUT for the period of time considered to be equivalent to evaluation and management services from 0.027 to 0.025. It also shortened the number of minutes to which the two highest intensity levels were assigned.

Based on the review, the RUC did not find the anesthesia study sufficiently compelling to justify a recommendation changing the work RVUs. The RUC concluded that the method used was a reasonable estimate of the rank order of the procedures. The RUC was concerned, however, that the actual magnitudes were not validated and therefore could not be directly compared to other specialties.

The RUC agreed to reconsider this issue at its February 1996 meeting and allowed Abt Associates to make an additional presentation. The RUC has not transmitted to us the results of its recommendation made at that meeting. Since we have not yet received the final recommendation, we will maintain the current base unit values and the current 1996 national conversion factor of $15.28 per unit.

5. Codes Without Work Relative Value Units

Comment: Two specialty societies objected to certain codes having zero work RVUs. The American Psychological Association believed we should adopt the 1993 RUC work RVU recommendations for CPT codes 90830 (a code which was deleted and replaced by CPT code 96100 (Psychological testing) in 1996), 95880 (Cerebral aphasia testing), 95881 (Cerebral developmental test), 95882 (Cognitive function testing), and 95883 (Neuropsychological testing). Those work RVU recommendations were in the 2.00 to 2.20 range. Also, the American Academy of Audiology believed that work RVUs of greater than zero should be assigned to certain audiology function tests that now have zero work RVUs.

Essentially, the organizations contended that our view that only the work of a physician, such as a doctor of medicine or a doctor of osteopathy, should qualify for work RVUs, is erroneous. They contended that everything that is included within the definition of a physician service under section 1848(j)(3) of the Act has work that is done by a ''physician'' and should therefore have physician work RVUs.

Response: We disagree. Section 1848 of the Act defined physician services to delineate which services would be paid under the physician fee schedule. The Congress intended that more than the professional services of doctors of medicine and doctors of osteopathy, that is, physicians as defined in section 1861(r) of the Act, be included for payment under the physician fee schedule.

We currently believe, however, that under section 1848 of the Act, only the work of physicians, as defined in section 1861(r) of the Act, their ''incident to'' employees, and independently practicing occupational and physical therapists qualify for payment through the work RVUs.

Every service for which payment is made under the physician fee schedule requires the expenditure of work resources by some entity. X-ray technicians ''work'' to produce the technical component of a diagnostic chest x-ray. Radiology technicians ''work'' to produce the technical component of radiation therapy. However, the Congress did not intend that every expenditure of ''work'' under the fee schedule be paid through the physician work RVUs. In section 1848(c)(1)(B) of the Act, the term ''practice expense component'' is defined to clearly include the wages of personnel who perform or create physician fee schedule services. Their labor is reimbursed through the practice expense component rather than the physician work component. Practice expense RVUs are currently charge-based, but, in 1998, they will be resource-based and there will be an opportunity for appropriate adjustments to these practice expense RVUs.

6. Codes Referred to the Physicians' Current Procedural Terminology Editorial Panel

For CPT 1997, the AMA placed a moratorium on specialty requests for coding changes in order to prevent a large number of new codes from being implemented at the same time as the changes in the physician fee schedule due to the 5-year review. The only coding change requests being considered are those for new technologies that cannot currently be reported with other codes in CPT and those for codes that are not on the physician fee schedule (for example, clinical laboratory services). The RUC and the CPT Editorial Panel had also anticipated, however, that a small percentage of the issues included in the 5-year review would require review by CPT before they could be considered by the RUC, because it appeared likely that some comments on misvalued codes would actually be due to the codes' nomenclature.

After reviewing the comments referred for inclusion in the 5-year review, the RUC identified 25 issues that it recommended be considered by CPT before further review by the RUC. The RUC requested the specialty societies to submit proposals to CPT in time for any coding changes to be reviewed by the RUC and reflected in CPT 1997 and the 1997 physician fee schedule, simultaneous with the other changes due to the 5-year review. We discuss these issues in Table 3, ''Codes Referred to the Physicians' Current Procedural Terminology Editorial Panel,'' which follows.

In addition to issues requiring further review by CPT, four issues were addressed in 5-year review comments that had already been addressed by the CPT Editorial Panel and the RUC as part of the updates for CPT 1996. We also discuss these issues in Table 3.

BILLING CODE 4120–01–P

Table 3

Codes Referred to the Physicians' Current Procedural Terminology Editorial Panel

CPT/HCPCS Code *	Description
A2000	Chiropractor manip of spine
11043	Cleansing of tissue/muscle
11044	Cleansing tissue/muscle/bone
11710	Scraping of 1-5 nails
11711	Scraping of additional nails
11971	Remove tissue expander(s)
13300	Repair of wound or lesion
14300	Skin tissue rearrangement
15000	Skin graft procedure
15101	Skin split graft procedure
15121	Skin split graft procedure
15201	Skin full graft procedure
15221	Skin full graft procedure
15241	Skin full graft procedure
15261	Skin full graft procedure
15755	Microvascular flap graft
22210	Revision of neck spine
22315	Treat spine fracture
22327	Repair thorax spine fracture
22554	Neck spine fusion
22558	Lumbar spine fusion
22610	Thorax spine fusion
22612	Lumbar spine fusion
22800	Fusion of spine
22802	Fusion of spine
22812	Fusion of spine
22840	Insert spine fixation device
22842	Insert spine fixation device
22845	Insert spine fixation device
31090	Exploration of sinuses
42880	Excise nose/throat lesion
46900	Destruction, anal lesion(s)
49020	Drain abdominal abscess
52340	Cystoscopy and treatment
53600	Dilate urethra stricture
53620	Dilate urethra stricture
53640	Relieve bladder retention
54100	Biopsy of penis
56300	Pelvis laparoscopy, dx
56305	Pelvic laparoscopy; biopsy
65105	Remove eye/attach implant
67210	Treatment of retinal lesion
68825	Explore tear duct system
78480	Heart function, (add-on)
92225	Special eye exam, initial
92226	Special eye exam, subsequent
92260	Ophthalmoscopy/dynamometry
93621	Electrophysiology evaluation
94150	Vital capacity test
95872	Muscle test, one fiber
97250	Myofascial release
97260	Regional manipulation
97261	Supplemental manipulations
97500	Orthotics training
97501	Supplemental training
97520	Prosthetic training
97521	Supplemental training
99238	Hospital discharge day

Table 3

Codes Referred to the Physicians' Current Procedural Terminology Editorial Panel

CPT/HCPCS Code *	Description
99301	Nursing facility care
99302	Nursing facility care
99303	Nursing facility care
99311	Nursing facility care,subseq
99312	Nursing facility care,subseq
99313	Nursing facility care, subseq

BILLING CODE 4120–01–C

The American Academy of Pediatrics submitted a public comment requesting that 480 CPT codes each be divided into several codes for different age categories and about 20 new codes be added for pediatric services that are not currently described in CPT. To address these issues, a Pediatrics Committee, comprised of RUC members and two members of the CPT Editorial Panel, was formed. This committee has made several recommendations to the American Academy of Pediatrics about how to handle the issues raised in its comments.

The RUC referred 65 codes to the CPT Editorial Panel to be considered for coding changes before further review by the RUC. These codes are included in the Addendum, ''Codes Subject to Comment.''

7. Potentially Overvalued Services

Comment/RUC Evaluation/ Recommendation: Because specialty societies would be likely to identify the most important undervalued services during the public comment period for the December 8, 1994 final rule (59 FR 63410), several groups, including the Physician Payment Review Commission, underscored the need to identify potentially overvalued services. The RUC and HCFA performed four complementary analyses to identify potentially misvalued services, based primarily on recent Medicare claims data. These analyses are discussed below.

HCFA provided data on IWPUT and other characteristics of services to carrier medical directors to use in a systematic analysis to identify misvalued services. As a result of this review, HCFA referred 300 potentially misvalued codes to the RUC. Those codes are included in Table 1 of this notice.

The RUC analyzed trends in the frequency and site-of-service for services furnished between 1992 and 1994. It identified services for which the frequency increased by an average of more than 25 percent per year, the percentage of times the service was furnished in an inpatient setting decreased by more than 5 percent per year, and there were more than 1,000 Medicare claims for the service in 1992 and 1994.

The RUC believed that the combination of a high rate of increase in annual frequency combined with a shift from inpatient to outpatient site-of-service could be an indicator that the services were becoming more commonly furnished and that the work involved each time the service was performed may be less than the current work RVUs imply.

The RUC also conducted an analysis of IWPUT, although the analysis differed somewhat from the HCFA analysis. The RUC divided the codes into clinical groupings and calculated the mean IWPUT for each group. The RUC identified individual services as being potentially overvalued if they had an IWPUT more than 3 standard deviations above the mean for the group.

Finally, the RUC identified a number of codes for which the final Harvard work RVUs are significantly lower than the 1995 Medicare work RVUs. This relationship suggested that the Medicare work RVUs are too high.

After eliminating from these three categories those codes that were already included in the 5-year review because of the comment process, the RUC asked us if 33 of these potentially overvalued codes could be included in the 5-year review. Since the codes were not identified until June 1995, the RUC also asked if it could take more time, if necessary, to complete review of these codes. We agreed to add the codes and to allow more time for review. We have noted these 33 codes in Table 1 of this notice.

The RUC disseminated the list to all the specialty societies on its Advisory Committee and, as with the codes identified through the comment process, asked them to indicate whether they wished to be involved in developing the primary recommendation to the RUC for each code. The RUC asked the specialty societies that responded affirmatively to take one of the following four actions:

- Recommend lower work RVUs for the code.
- Demonstrate, if the code was identified by the RUC's analysis of the Harvard data, that it is appropriate that the service have a higher IWPUT than other clinically related codes or that the current Medicare work RVUs are more appropriate than the Harvard work RVUs.
- Demonstrate, if the code was identified by the AMA trends analysis, that the service work has not decreased over time.
- Show why the code was identified for review in error.

The full RUC, not one of the RUC workgroups, conducted the primary review of most of these services. For 10 of the 33 codes, the specialty societies recommended that the work RVUs be reduced, and the RUC concurred with these recommendations. Five of them were found to have been identified in error because of problems in the Medicare Part B data or because previous coding changes were responsible for the trend changes. The RUC reviewed an additional 17 services and recommended that the current work RVUs be maintained. We did not receive RUC recommendations for the 6 remaining codes. One code, CPT code 67210, was sent to the CPT Editorial Panel for clarification. The RUC has not completed its consideration of the other 5 codes.

HCFA Decision: We agree with all but one of the RUC recommendations. For CPT codes 28010, 33970, 67210, 77420, 77425, and 77430, we are proposing to maintain the current work RVUs because we have no RUC recommendations or additional evidence to assist us in revising the values.

CPT code 37201 (Transcatheter therapy, infusion for thrombolysis other than coronary).

The current work RVUs are 7.25. The RUC agreed with the Society for Cardiovascular and Interventional Radiology that the frequency of claims for this code is growing because thrombolytic infusion is an effective therapy for thrombosed arteries and grafts, allowing physicians to save patient limbs. The service is still a relatively new technology and the RUC believed that it is appropriately valued.

Unlike CPT code 34111 (Removal of arm artery clot), a similar open procedure with a 90-day global period, CPT code 37201 is billed with an evaluation and management code and a supervision and interpretation code. Therefore, we believe that the work RVUs for CPT code 37201 should approximate the work RVUs for CPT code 34111 (7.18) minus the work RVUs for a level-two subsequent hospital visit (0.88) and the work RVUs for the radiological supervision and interpretation, CPT code 75894 (1.31). We are proposing 5.00 work RVUs for CPT code 37201.

D. Other Issues

1. Budget Neutrality

In conjunction with our review of proposed changes to the work RVUs, we reexamined our method for making the required budget neutrality adjustments. Past adjustments were made across-the-board, either on all RVUs or, beginning in 1996, on the conversion factors. Because this is a 5-year review of work RVUs, we believe the budget neutrality adjustment should be made only on the work RVUs.

Many services on the physician fee schedule have no work RVUs assigned to them. Services with no work RVUs were not subject to this 5-year review.

If we made the budget neutrality adjustment either on all RVUs or on the conversion factors, those services would be negatively affected by a process that did not consider those codes. Other services that would be adversely affected by an across-the-board approach to budget neutrality are those with a practice expense percentage of total RVUs that is greater than the average practice expense percentage for the physician fee schedule.

Next year we will propose new resource-based RVUs to capture the practice expenses associated with each CPT and alphanumeric HCPCS code on the physician fee schedule. We expect to make a budget neutrality adjustment as a result of this change. At that time, we plan to make the adjustment across the practice expense RVUs. Making the budget neutrality adjustment only across the type of RVUs affected maintains the integrity of the different pools for work, practice expense, and malpractice expense.

Therefore, we propose a budget neutrality adjustment resulting from the 5-year review of work RVUs on work RVUs only. This proposal is consistent with the Physician Payment Review Commission's recommendation in its 1996 Annual Report to Congress that ''Implementation of any changes to work relative values as a result of the current five-year review should be budget neutral with respect to work values and should not affect practice expense and malpractice expense relative values.''

Based on our proposed work RVUs, the necessary budget neutrality adjustment across the work RVUs is a decrease of 7.63 percent. This percentage is subject to change depending on refinements made in response to the comments. Because this adjustment would be on only the work RVUs, it does not directly correspond to the impact on payments. The total impact of this adjustment will also be somewhat mitigated by the anticipated updates to the conversion factors for 1997. For a discussion of the impact on Medicare payments, refer to section V.B. To make the adjustment, we plan to rescale across the work RVUs. However, in recognition that changing RVUs causes some administrative burdens for other payers, we will consider developing a new budget neutrality adjuster that will be applied only to the work RVUs if we receive comments requesting that we do so. In this case, the payment formula would be calculated as follows: [(work RVU) (work adjuster) (work geographic practice cost index) + (practice expense RVU) (practice expense geographic practice cost index) + (malpractice RVU) (malpractice geographic practice cost index)] × conversion factor. From year to year this new adjuster would reflect the cumulative adjustment needed to maintain work budget neutrality.

We will continue to make any budget neutrality adjustment due to policy changes on the conversion factors and not on the RVUs. Under our proposal, only adjustments resulting from RVU changes will be made on the appropriate pool of RVUs (for example, work, practice expense, or malpractice expense).

2. Calculation of Practice Expense and Malpractice Expense Relative Value Units

As we noted in our December 8, 1994 final rule, practice expense and malpractice expense RVUs were not subject to comment and will not be recalculated as a part of the 5-year review of work RVUs (59 FR 63454). Section 1848(c)(2) of the Act requires that the practice expense and malpractice expense RVUs be calculated based upon 1991 allowed charges and practice expense and malpractice expense shares for the specialties that furnish the services. When we calculated the practice expense and malpractice expense RVUs, we aged 1989 actual charges forward to approximate 1991 actual charges, and we used the specialty practice shares from the AMA's Socioeconomic Survey of practice expenses by specialty.

In addition, as we mentioned in our December 8, 1995 final rule, we are presently developing a methodology for a resource-based system for practice expense RVUs for each physician service (60 FR 63169). We expect to publish a proposed rule in the spring of 1997 and will implement the resource-based practice expense RVUs beginning January 1, 1998.

3. Impact of Work Relative Value Unit Changes for Evaluation and Management Services on Work Relative Value Units for Global Surgical Services

In the November 25, 1992 final notice for the 1993 physician fee schedule, we increased the RVUs for some evaluation and management services. At the time, we stated, ''Because we have not increased the RVUs for the lower level codes, we do not believe it would be necessary or appropriate to revise the work RVUs of any surgical procedures resulting from our refinement of the evaluation and management services.'' (57 FR 55951) We based this decision on evidence from the Harvard study that indicates that the evaluation and management services included in the global surgical packages are typically comparable to lower level visits.

Based on data from the 5-year review of work RVUs, we are proposing to increase most of the work RVUs for evaluation and management services, including those for lower level established patient visits. Our reasons for increasing these work RVUs suggest that making corresponding across-the-board increases to the work RVUs for all global surgical packages may be inappropriate. To the extent that evaluation and management services have been undervalued relative to procedural services, it can be inferred that we should not increase the procedural services simply because we increased the work RVUs for the evaluation and management services. In many cases the work RVUs for global services have been reviewed, either as part of the 5-year review or for new and revised codes, and significant aberrations of the work in the postoperative office visits have not been obvious. The assumption that work RVUs for evaluation and management services are directly related to global surgical services has not been validated.

We also revised the work RVUs for the evaluation and management services in recognition of the increase in preservice and postservice work. Many of the items included in preservice and postservice work are not of equal magnitude when considering preoperative and postoperative visits. We believe that the preservice and postservice work associated with postoperative visits has not changed. The arguments about increased case management, telephone calls, and documentation that supported changes for evaluation and management services may not hold true for visits in a global surgical period where many elements may be duplicative. For example, the documentation requirements are much lower for a surgical follow-up visit than for an established patient office visit because individual claims subject to audit are not being submitted. The visits also all fall within a defined time limit (that is, 0, 10, or 90 days). Regular office visits are not so predictable, increasing the time that the postservice work may cover.

When we originally valued most of the global surgical packages, we did not use a discreet building block approach. We acknowledged the need to incorporate evaluation and management equivalents but did not use specific evaluation and management services as described by CPT. For all these reasons, we believe that the global surgical packages should be valued solely on their own merit rather than in

connection with the evaluation and management services.

We did not receive comments that suggested we make changes to the work RVUs assigned to CPT codes with global periods to reflect changes in the work RVUs for the evaluation and management services. We did receive comments to review many procedure codes because of changes in technology, work, skill, etc. Unlike the comments regarding the need to review the evaluation and management services, the comments on surgical codes did not discuss any change in the postservice work associated with the postoperative visits. Additionally, the RUC did not express an opinion on this issue.

Given a lack of evidence that the preservice and postservice work associated with surgical procedures has changed, we are not adjusting the work RVUs of services with a global period. We have no plans to adjust the global surgical packages as a result of our increases to the evaluation and management services. If the physician community, through the RUC, makes a recommendation to us on this issue, we will consider reviewing our current policy. However, until we receive compelling evidence to make adjustments to the global surgical packages, we will make no across-the-board adjustments outside of our regular review of work RVUs.

4. Future Review

Since the physician fee schedule was implemented in 1992 we have undertaken significant annual revisions to the work RVUs for large numbers of codes, and with the publication of a final rule later this year we will have completed the first 5-year review. We believe that through these extensive efforts the work RVUs are now largely correct. We believe that a significant case would need to be made to change the work RVUs for the overwhelming bulk of procedures.

For the future, we are considering periodic review of the physician fee schedule as necessary. However, there are several categories of codes and issues for which we have tentative plans to review prior to the next 5-year review: Services that typically require reporting more than one code to describe the service correctly; the relationship of physician work between analogous open and closed procedures; radiation oncology; and rank order anomalies within families.

5. Nature and Format of Comments on Work Relative Value Units

We will accept comments on the proposed work RVUs for the codes identified in the Addendum of this notice. We will also accept comments on the anesthesia codes. Comments should discuss how the work associated with a given CPT/HCPCS code is analogous to the work in other services or discuss the rationale for disagreeing with the RUC recommendation. We are especially interested in information or arguments that were not presented in earlier comments.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, all physicians are considered to be small entities.

Although the changes included in this proposed notice are not expected to have a significant economic impact on a substantial number of small entities, we are preparing a voluntary regulatory flexibility analysis. The provisions of this proposed notice would have varying effects on the distribution of Medicare physician payments across specialties. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by one or more provisions of this notice. In addition, physicians who are paid by private insurers for non-Medicare services would be affected to the extent that they are paid by private insurers that choose to use the RVUs. However, with few exceptions, we expect that the impact on individual medical practitioners would be limited.

B. Effects on Physician Payments

1. Impact Estimation Methodology

Physician fee schedule impacts were estimated by comparing predicted physician payments under a continuation of the current work RVUs to the estimated payments under the proposed work RVUs resulting from the 5-year review. The impact analysis does not incorporate assumptions about volume and intensity responses.

2. Overall Fee Schedule Impact

Because the proposed work RVUs cause an increase in total estimated payments under the physician fee schedule, we must reduce payments in order to maintain budget neutrality as required by section 1848(c)(2)(B)(ii)(II) of the Act. As we discussed in section II.D.1. of this notice, we are proposing to make the budget neutrality adjustment on the physician work component on the physician fee schedule. In the discussion below of differential impacts by specialty, we have incorporated this projected downward adjustment of 7.63 percent.

3. Specialty Level Effect

Table 4, ''Five-Year Review Impact on Medicare Payments by Specialty,'' shows the estimated percentage change in Medicare physician payment from the current work RVUs to the proposed work RVUs by specialty. The specialties are ranked according to the impact of the work RVU change on Medicare payments. The magnitude of the impact depends on the mix of services the specialty provides. In general, because of the proposed changes to the evaluation and management services, those specialties that account for more visits and fewer procedures are expected to experience larger increases in Medicare payments than procedurally oriented specialties, including surgical specialties.

Because the budget neutrality adjustment reduces payments for services with work RVUs which did not experience any change as a result of the 5-year review, specialties that primarily perform these services will experience a negative impact. For example, although the one code that chiropractors can bill under Medicare, HCPCS code A2000, was unchanged, chiropractors are expected to experience a 4.4 percent decrease in Medicare payments. This decrease is less than the budget neutrality adjustment of 7.63 percent because only 60 percent of payments for

HCPCS code A2000 are attributable to the work RVUs. The rest of the payments are attributable to the practice expense and malpractice expense RVUs which were unaffected by the budget neutrality adjustment. The total impact of the budget neutrality adjustment will be somewhat mitigated by the anticipated updates to the conversion factors for 1997.

TABLE 4.—FIVE-YEAR REVIEW IMPACT ON MEDICARE PAYMENTS BY SPECIALTY

Specialty	Impact of work RVU change (percent)
Family Practice	4.6
Internal Medicine	4.2
Hematology Oncology	3.9
Emergency Medicine	3.7
Pulmonary	3.6
General Practice	3.5
Rheumatology	3.4
All Other Physicians	2.9
Neurology	2.6
Obstetrics/Gynecology	2.0
Clinics	1.2
Cardiology	1.1
Otolaryngology	0.9
Vascular Surgery	0.5
Gastroenterology	0.2
Neurosurgery	0.2
Nephrology	−0.4
General Surgery	−0.8
Orthopedic Surgery	−1.5
Suppliers	−1.6
Urology	−1.6
Oral Surgery	−1.8
Thoracic Surgery	−1.8
Plastic Surgery	−2.0
Psychiatry	−2.2
Cardiac Surgery	−2.4
Radiology	−2.6
Podiatry	−2.6
Radiation Oncology	−3.1
Ophthalmology	−3.8
Nonphysician Practitioners	−4.1
Pathology	−4.2
Optometrist	−4.5
Chiropractor	−4.6
Anesthesiology	−4.7
Dermatology	−6.2
All Physician Specialties	0.0

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the Regulatory Flexibility Act. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed notice would have little direct effect on payments to rural hospitals since this notice would change only payments made to physicians and certain other practitioners under Part B of the Medicare program and would not change payments to hospitals under Part A. We do not believe the changes would have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this notice would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 1848(c) of the Social Security Act (42 U.S.C. 1395w–4(c)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 26, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: April 26, 1996.

Donna E. Shalala,

Secretary.

Addendum—Codes Subject to Comment

This addendum lists the codes reviewed during the 5-year review. This addendum includes the following information:

- *CPT/HCPCS (HCFA Common Procedure Coding System) code.* This is the CPT or alphanumeric HCPCS code for a service.
- *Modifier.* A modifier -26 is shown if the work RVUs represent the professional component of the service.
- *Description.* This is an abbreviated version of the narrative description of the code.
- *Proposed work RVUs.* This column contains the proposed RVUs for physician work. The work RVUs shown have not been adjusted for budget neutrality.

BILLING CODE 4120–01–P

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
A2000		Chiropractor manip of spine	0.45
M0101		Cutting or removal of corns	0.37
10040		Acne surgery	0.80
10061		Drainage of skin abscess	2.24
10080		Drainage of pilonidal cyst	1.12
10140		Drainage of hematoma/fluid	1.48
11000		Surgical cleansing of skin	0.60
11001		Additional cleansing of skin	0.30
11043		Cleansing of tissue/muscle	1.83
11044		Cleansing tissue/muscle/bone	2.28
11101		Biopsy, each added lesion	0.41
11300		Shave skin lesion	0.51
11301		Shave skin lesion	0.85
11302		Shave skin lesion	1.05
11303		Shave skin lesion	1.24
11305		Shave skin lesion	0.67
11306		Shave skin lesion	0.99
11307		Shave skin lesion	1.14
11308		Shave skin lesion	1.41
11310		Shave skin lesion	0.73
11311		Shave skin lesion	1.05
11312		Shave skin lesion	1.20
11313		Shave skin lesion	1.62
11441		Removal of skin lesion	1.56
11710		Scraping of 1-5 nails	0.32
11711		Scraping of additional nails	0.20
11731		Removal of second nail plate	0.57
11732		Remove additional nail plate	0.57
11750		Removal of nail bed	1.66
11752		Remove nail bed/finger tip	2.37
11762		Reconstruction of nail bed	2.84
11901		Added skin lesion injections	0.80
11960		Insert tissue expander(s)	8.00
11971		Remove tissue expander(s)	1.51
13131		Repair of wound or lesion	3.74
13132		Repair of wound or lesion	5.75
13150		Repair of wound or lesion	3.76
13151		Repair of wound or lesion	4.40
13160		Late closure of wound	9.53
13300		Repair of wound or lesion	5.11
14300		Skin tissue rearrangement	10.76
15000		Skin graft procedure	1.95
15101		Skin split graft procedure	1.72
15121		Skin split graft procedure	2.67
15201		Skin full graft procedure	1.32
15221		Skin full graft procedure	1.19
15241		Skin full graft procedure	1.86
15261		Skin full graft procedure	2.23
15570		Form skin pedicle flap	3.75
15572		Form skin pedicle flap	3.80
15574		Form skin pedicle flap	3.85
15576		Form skin pedicle flap	4.27
15580		Attach skin pedicle graft	3.30
15732		Muscle-skin graft, head/neck	16.52
15736		Muscle-skin graft, arm	15.26
15738		Muscle-skin graft, leg	16.52
15755		Microvascular flap graft	28.33
15958		Remove thigh pressure sore	13.89

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
16000		Initial treatment of burn(s)	0.89
16035		Incision of burn scab	4.53
17000		Destroy benign/premal lesion	0.36
17001		Destruction of add'l lesions	0.14
17002		Destruction of add'l lesions	0.14
17106		Destruction of skin lesions	4.54
17107		Destruction of skin lesions	9.06
17108		Destruction of skin lesions	13.10
17304		Chemosurgery of skin lesion	7.60
19120		Removal of breast lesion	5.35
19140		Removal of breast tissue	4.85
19160		Removal of breast tissue	5.75
19180		Removal of breast	8.09
19318		Reduction of large breast	15.00
19325		Enlarge breast with implant	8.05
19350		Breast reconstruction	8.52
20225		Bone biopsy, trocar/needle	1.87
21015		Resection of facial tumor	4.94
21025		Excision of bone, lower jaw	5.03
21030		Removal of face bone lesion	6.04
21031		Remove exostosis, mandible	3.14
21032		Remove exostosis, maxilla	3.14
21041		Removal of jaw bone lesion	6.04
21110		Interdental fixation	5.03
21125		Augmentation lower jaw bone	6.22
21150		Reconstruct midface, lefort	24.41
21188		Reconstruction of midface	21.47
21194		Reconstruct lower jaw bone	18.81
21243		Reconstruction of jaw joint	18.98
21270		Augmentation cheek bone	12.10
21320		Treatment of nose fracture	1.82
21330		Repair of nose fracture	5.03
21338		Repair nasoethmoid fracture	6.04
21339		Repair nasoethmoid fracture	7.56
21435		Repair craniofacial fracture	16.12
21453		Treat lower jaw fracture	5.18
21462		Repair lower jaw fracture	9.15
21485		Reset dislocated jaw	3.73
21610		Partial removal of rib	13.66
21930		Remove lesion, back or flank	4.82
22849		Reinsert spinal fixation	17.55
22855		Remove spine fixation device	14.11
22900		Remove abdominal wall lesion	5.13
23222		Partial removal of humerus	22.78
23395		Muscle transfer,shoulder/arm	16.00
23420		Repair of shoulder	12.60
23466		Repair shoulder capsule	13.65
23472		Reconstruct shoulder joint	16.09
23615		Repair humerus fracture	8.38
23802		Fusion of shoulder joint	15.62
23920		Amputation at shoulder joint	13.60
24363		Replace elbow joint	17.66
24435		Repair humerus with graft	12.19
24546		Repair humerus fracture	14.66
25065		Biopsy forearm soft tissues	1.94
25107		Remove wrist joint cartilage	5.89
25115		Remove wrist/forearm lesion	8.00
25420		Repair/graft radius & ulna	15.34
25446		Wrist replacement	15.52

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
25575		Repair fracture radius/ulna	9.47
25628		Repair wrist bone fracture	7.81
25810		Fusion/graft of wrist joint	9.79
26010		Drainage of finger abscess	1.49
26123		Release palm contracture	8.64
26356		Repair finger/hand tendon	7.05
26442		Release palm & finger tendon	7.45
26449		Release forearm/hand tendon	6.39
26531		Revise knuckle with implant	7.57
26992		Drainage of bone lesion	12.30
27001		Incision of hip tendon	6.50
27003		Incision of hip tendon	6.62
27006		Incision of hip tendons	9.00
27040		Biopsy of soft tissues	2.71
27049		Remove tumor, hip/pelvis	12.52
27052		Biopsy of hip joint	5.45
27076		Extensive hip surgery	20.23
27090		Removal of hip prosthesis	10.34
27134		Revise hip joint replacement	27.00
27137		Revise hip joint replacement	20.00
27138		Revise hip joint replacement	21.00
27146		Incision of hip bone	16.55
27147		Revision of hip bone	19.70
27151		Incision of hip bones	21.50
27156		Revision of hip bones	23.62
27181		Repair slipped epiphysis	13.80
27227		Treat hip fracture(s)	22.00
27228		Treat hip fracture(s)	25.59
27259		Repair of hip dislocation	20.50
27265		Treatment of hip dislocation	4.74
27266		Treatment of hip dislocation	6.96
27284		Fusion of hip joint	15.62
27286		Fusion of hip joint	15.65
27323		Biopsy thigh soft tissues	2.23
27329		Remove tumor, thigh/knee	13.00
27365		Extensive leg surgery	15.00
27397		Transplants of thigh tendons	10.53
27428		Reconstruction, knee	13.28
27429		Reconstruction, knee	14.67
27435		Incision of knee joint	8.74
27454		Realignment of thigh bone	16.55
27457		Realignment of knee	12.60
27486		Revise knee joint replace	18.00
27487		Revise knee joint replace	24.00
27488		Removal of knee prosthesis	14.48
27506		Repair of thigh fracture	15.93
27513		Treatment of thigh fracture	16.78
27536		Repair of knee fracture	14.51
27550		Treat knee dislocation	5.53
27580		Fusion of knee	18.20
27607		Treat lower leg bone lesion	7.05
27712		Realignment of lower leg	13.20
27724		Repair/graft of tibia	13.88
27725		Repair of lower leg	14.50
27759		Repair of tibia fracture	12.60
27827		Treat lower leg fracture	12.95
27828		Treat lower leg fracture	15.12
27870		Fusion of ankle joint	13.00
27894		Decompression of leg	9.13

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
28002		Treatment of foot infection	3.76
28010		Incision of toe tendon	2.97
28080		Removal of foot lesion	3.18
28113		Part removal of metatarsal	4.23
28114		Removal of metatarsal heads	7.16
28116		Revision of foot	7.00
28120		Part removal of ankle/heel	4.81
28130		Removal of ankle bone	7.33
28190		Removal of foot foreign body	1.91
28200		Repair of foot tendon	4.45
28202		Repair/graft of foot tendon	6.38
28208		Repair of foot tendon	4.11
28220		Release of foot tendon	4.27
28222		Release of foot tendons	5.36
28225		Release of foot tendon	3.42
28226		Release of foot tendons	4.27
28230		Incision of foot tendon(s)	4.00
28232		Incision of toe tendon	3.26
28234		Incision of foot tendon	3.19
28238		Revision of foot tendon	7.27
28261		Revision of foot tendon	10.95
28262		Revision of foot and ankle	15.00
28270		Release of foot contracture	4.58
28272		Release of toe joint, each	3.67
28285		Repair of hammertoe	4.41
28288		Partial removal of foot bone	4.23
28292		Correction of bunion	6.24
28293		Correction of bunion	8.25
28299		Correction of bunion	8.46
28309		Incision of metatarsals	12.00
28341		Resect enlarged toe	7.86
28344		Repair extra toe(s)	3.89
28415		Repair of heel fracture	15.00
28476		Repair metatarsal fracture	3.15
28496		Repair big toe fracture	2.18
28531		Treat sesamoid bone fracture	2.01
28576		Treat foot dislocation	3.75
28615		Repair foot dislocation	6.99
28626		Treat toe dislocation	2.67
28666		Treat toe dislocation	2.56
28705		Fusion of foot bones	14.23
28715		Fusion of foot bones	12.18
28730		Fusion of foot bones	9.91
28735		Fusion of foot bones	10.07
28737		Revision of foot bones	8.89
28740		Fusion of foot bones	7.40
28750		Fusion of big toe joint	6.90
28755		Fusion of big toe joint	4.48
28760		Fusion of big toe joint	7.00
29700		Removal/revision of cast	0.57
29705		Removal/revision of cast	0.76
29840		Wrist arthroscopy	5.39
29843		Wrist arthroscopy/surgery	5.86
29844		Wrist arthroscopy/surgery	6.22
29845		Wrist arthroscopy/surgery	7.34
29846		Wrist arthroscopy/surgery	6.60
29847		Wrist arthroscopy/surgery	6.93
29848		Wrist arthroscopy/surgery	4.04
29876		Knee arthroscopy/surgery	7.51

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
29882		Knee arthroscopy/surgery	8.24
29889		Knee arthroscopy/surgery	14.41
30020		Drainage of nose lesion	1.38
30545		Repair nasal defect	10.89
30903		Control of nosebleed	1.54
30905		Control of nosebleed	1.97
30906		Repeat control of nosebleed	2.45
30920		Ligation upper jaw artery	8.79
31090		Exploration of sinuses	8.65
31225		Removal of upper jaw	17.50
31230		Removal of upper jaw	20.00
31290		Nasal/sinus endoscopy, surg	16.05
31291		Nasal/sinus endoscopy, surg	17.00
31292		Nasal/sinus endoscopy, surg	13.83
31293		Nasal/sinus endoscopy, surg	15.15
31294		Nasal/sinus endoscopy, surg	18.00
31320		Diagnostic incision larynx	4.54
31360		Removal of larynx	15.19
31365		Removal of larynx	21.83
31367		Partial removal of larynx	18.98
31368		Partial removal of larynx	23.72
31370		Partial removal of larynx	18.50
31380		Partial removal of larynx	18.50
31382		Partial removal of larynx	18.50
31390		Removal of larynx & pharynx	25.00
31395		Reconstruct larynx & pharynx	28.00
31400		Revision of larynx	9.06
31502		Change of windpipe airway	0.65
31513		Injection into vocal cord	2.10
31520		Diagnostic laryngoscopy	2.56
31531		Operative laryngoscopy	3.39
31536		Operative laryngoscopy	3.16
31541		Operative laryngoscopy	4.13
31561		Operative laryngoscopy	5.46
31571		Laryngoscopy with injection	3.87
31580		Revision of larynx	11.01
31587		Revision of larynx	10.00
31600		Incision of windpipe	3.62
31601		Incision of windpipe	4.45
31603		Incision of windpipe	4.15
31610		Incision of windpipe	7.87
31611		Surgery/speech prosthesis	5.03
31614		Repair windpipe opening	6.11
31750		Repair of windpipe	11.73
31780		Reconstruct windpipe	16.14
32000		Drainage of chest	1.54
32020		Insertion of chest tube	3.98
32100		Exploration/biopsy of chest	10.07
32440		Removal of lung	19.15
32480		Partial removal of lung	16.84
32500		Partial removal of lung	13.10
32602		Thoracoscopy, diagnostic	5.96
33010		Drainage of heart sac	2.24
33208		Insertion of heart pacemaker	7.28
33244		Remove generator	8.34
33425		Repair of mitral valve	25.57
33426		Repair of mitral valve	29.42
33427		Repair of mitral valve	32.07
33510		CABG, vein, single	23.29

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
33511		CABG, vein, two	25.57
33512		CABG, vein, three	27.84
33513		CABG, vein, four	30.12
33514		CABG, vein, five	32.39
33516		CABG, vein, six+	34.66
33530		Coronary artery, bypass/reop	5.86
33533		CABG, arterial, single	24.00
33534		CABG, arterial, two	26.99
33535		CABG, arterial, three	29.98
33536		CABG, arterial, four+	32.96
33870		Transverse aortic arch graft	37.74
33875		Thoracic aorta graft	31.23
33970		Aortic circulation assist	8.05
33971		Aortic circulation assist	4.04
34201		Removal of artery clot	8.04
35081		Repair defect of artery	26.23
35082		Repair artery rupture, aorta	34.20
35091		Repair defect of artery	33.16
35102		Repair defect of artery	28.80
35301		Rechanneling of artery	17.79
35470		Repair arterial blockage	8.63
35471		Repair arterial blockage	10.07
35472		Repair arterial blockage	6.91
35473		Repair arterial blockage	6.04
35474		Repair arterial blockage	7.36
35475		Repair arterial blockage	9.49
35476		Repair venous blockage	6.04
35490		Atherectomy, percutaneous	11.08
35491		Atherectomy, percutaneous	7.61
35492		Atherectomy, percutaneous	6.65
35493		Atherectomy, percutaneous	8.10
35494		Atherectomy, percutaneous	10.44
35495		Atherectomy, percutaneous	9.49
35556		Artery bypass graft	19.37
35566		Artery bypass graft	24.45
35583		Vein bypass graft	20.03
35585		Vein bypass graft	25.92
35654		Artery bypass graft	17.62
35656		Artery bypass graft	17.84
35681		Artery bypass graft	3.93
35875		Removal of clot in graft	8.19
36010		Place catheter in vein	2.43
36215		Place catheter in artery	4.68
36218		Place catheter in artery	1.01
36245		Place catheter in artery	4.68
36248		Place catheter in artery	1.01
36489		Insertion of catheter, vein	1.22
36520		Plasma and/or cell exchange	1.74
36533		Insertion of access port	5.00
36534		Revision of access port	2.73
36620		Insertion catheter, artery	1.15
36821		Artery-vein fusion	8.39
36830		Artery-vein graft	11.25
37201		Transcatheter therapy infuse	5.00
37205		Transcatheter stent	8.28
37206		Transcatheter stent	4.13
37730		Removal of leg veins	6.63
38230		Bone marrow collection	4.22
38720		Removal of lymph nodes, neck	12.29

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
38724		Removal of lymph nodes, neck	13.22
39400		Visualization of chest	5.11
40806		Incision of lip fold	0.31
40808		Biopsy of mouth lesion	0.91
40820		Treatment of mouth lesion	1.23
40843		Reconstruction of mouth	11.63
41000		Drainage of mouth lesion	1.25
41005		Drainage of mouth lesion	1.21
41010		Incision of tongue fold	1.01
41112		Excision of tongue lesion	2.63
41113		Excision of tongue lesion	3.09
41115		Excision of tongue fold	1.69
41116		Excision of mouth lesion	2.36
41135		Tongue and neck surgery	21.15
41145		Tongue removal; neck surgery	27.58
41150		Tongue, mouth, jaw surgery	21.00
41155		Tongue, jaw, & neck surgery	25.60
41252		Repair tongue laceration	2.92
42106		Excision lesion, mouth roof	2.05
42120		Remove palate/lesion	5.39
42145		Repair,palate,pharynx/uvula	7.04
42182		Repair palate	3.78
42200		Reconstruct cleft palate	11.25
42210		Reconstruct cleft palate	13.75
42260		Repair nose to lip fistula	9.18
42305		Drainage of salivary gland	5.59
42320		Drainage of salivary gland	2.30
42340		Removal of salivary stone	4.47
42415		Excise parotid gland/lesion	16.12
42426		Excise parotid gland/lesion	19.88
42500		Repair salivary duct	4.06
42505		Repair salivary duct	5.92
42507		Parotid duct diversion	5.96
42508		Parotid duct diversion	8.64
42720		Drainage of throat abscess	4.53
42725		Drainage of throat abscess	9.50
42809		Remove pharynx foreign body	1.76
42815		Excision of neck cyst	6.75
42820		Remove tonsils and adenoids	3.59
42880		Excise nose/throat lesion	6.01
42961		Control throat bleeding	5.18
42962		Control throat bleeding	6.64
42972		Control nose/throat bleeding	6.55
43200		Esophagus endoscopy	1.59
43235		Upper GI endoscopy,diagnosis	2.39
43239		Upper GI endoscopy, biopsy	2.69
43260		Endoscopy,bile duct/pancreas	5.96
43262		Endoscopy,bile duct/pancreas	7.39
43420		Repair esophagus opening	10.19
43456		Dilate esophagus	2.57
43610		Excision of stomach lesion	10.11
43750		Place gastrostomy tube	4.27
43830		Place gastrostomy tube	6.52
44010		Incision of small bowel	9.24
44020		Exploration of small bowel	10.69
44140		Partial removal of colon	16.97
44141		Partial removal of colon	17.36
44143		Partial removal of colon	17.36
44144		Partial removal of colon	16.97

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
44145		Partial removal of colon	21.29
44152		Removal of colon/ileostomy	22.98
44160		Removal of colon	14.09
44322		Colostomy with biopsies	10.31
44388		Colon endoscopy	2.82
44389		Colonoscopy with biopsy	3.13
44390		Colonoscopy for foreign body	3.83
44391		Colonoscopy for bleeding	4.32
44392		Colonoscopy & polypectomy	3.82
44393		Colonoscopy, lesion removal	4.84
44394		Colonoscopy w/snare	4.43
44950		Appendectomy	8.25
45110		Removal of rectum	21.68
45303		Proctosigmoidoscopy	0.80
45378		Diagnostic colonoscopy	3.70
45380		Colonoscopy and biopsy	4.01
45550		Repair rectum;remove sigmoid	16.97
46040		Incision of rectal abscess	4.41
46255		Hemorrhoidectomy	4.95
46260		Hemorrhoidectomy	6.70
46261		Remove hemorrhoids & fissure	7.62
46262		Remove hemorrhoids & fistula	8.01
46900		Destruction, anal lesion(s)	1.81
46945		Ligation of hemorrhoids	1.90
46946		Ligation of hemorrhoids	2.76
47130		Partial removal of liver	31.56
47425		Incision of bile duct	14.79
47600		Removal of gallbladder	10.68
47605		Removal of gallbladder	11.53
47610		Removal of gallbladder	15.00
48150		Partial removal of pancreas	40.25
49000		Exploration of abdomen	11.00
49020		Drain abdominal abscess	9.06
49180		Biopsy, abdominal mass	1.73
49255		Removal of omentum	10.25
49505		Repair inguinal hernia	6.17
49605		Repair umbilical lesion	21.92
49606		Repair umbilical lesion	17.93
49900		Repair of abdominal wall	9.40
50010		Exploration of kidney	10.07
50020		Drainage of kidney abscess	12.41
50040		Drainage of kidney	13.80
50081		Removal of kidney stone	20.58
50200		Biopsy of kidney	2.63
50205		Biopsy of kidney	10.50
50220		Removal of kidney	15.98
50225		Removal of kidney	18.93
50230		Removal of kidney	20.56
50234		Removal of kidney & ureter	21.11
50236		Removal of kidney & ureter	23.33
50240		Partial removal of kidney	20.24
50320		Removal of donor kidney	21.22
50390		Drainage of kidney lesion	1.96
50392		Insert kidney drain	3.38
50393		Insert ureteral tube	4.16
50395		Create passage to kidney	3.38
50590		Fragmenting of kidney stone	7.13
50684		Injection for ureter x-ray	0.76
50715		Release of ureter	17.60

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
51010		Drainage of bladder	2.54
51597		Removal of pelvic structures	35.27
51600		Injection for bladder x-ray	0.88
51605		Preparation for bladder xray	0.64
51610		Injection for bladder x-ray	1.05
51700		Irrigation of bladder	0.88
51720		Treatment of bladder lesion	1.96
51725	26	Simple cystometrogram	1.51
51726	26	Complex cystometrogram	1.71
51736	26	Urine flow measurement	0.61
51741	26	Electro-uroflowmetry, first	1.14
51772	26	Urethra pressure profile	1.61
51785	26	Anal/urinary muscle study	1.53
51792	26	Urinary reflex study	1.10
51795	26	Urine voiding pressure study	1.53
51797	26	Intraabdominal pressure test	1.60
52007		Cystoscopy and biopsy	3.02
52270		Cystoscopy & revise urethra	3.37
52275		Cystoscopy & revise urethra	4.70
52276		Cystoscopy and treatment	5.00
52277		Cystoscopy and treatment	6.17
52340		Cystoscopy and treatment	7.76
52500		Revision of bladder neck	7.82
52510		Dilation prostatic urethra	6.04
53600		Dilate urethra stricture	1.21
53620		Dilate urethra stricture	1.62
53640		Relieve bladder retention	1.59
54100		Biopsy of penis	1.90
54200		Treatment of penis lesion	1.01
54231		Dynamic cavernosometry	2.04
54640		Suspension of testis	6.55
56300		Pelvis laparoscopy, dx	3.58
56305		Pelvic laparoscopy; biopsy	3.80
56307		Laparoscopy; remove adnexa	10.68
56309		Laparoscopy; remove myoma	13.79
56312		Laparoscopic lymphadenectomy	12.06
56315		Laparoscopic appendectomy	8.25
56340		Laparoscopic cholecystectomy	10.68
56341		Laparoscopic cholecystectomy	11.53
56360		Peritoneoscopy	3.87
56605		Biopsy of vulva/perineum	1.10
56606		Biopsy of vulva/perineum	0.55
56633		Extensive vulva surgery	15.00
57110		Removal of vagina	13.48
57150		Treat vagina infection	0.55
57265		Extensive repair of vagina	7.36
57270		Repair of bowel pouch	11.30
57280		Suspension of vagina	14.10
57289		Repair bladder & vagina	10.80
57305		Repair rectum-vagina fistula	12.75
57307		Fistula repair & colostomy	15.08
57400		Dilation of vagina	2.27
57410		Pelvic examination	1.75
57415		Removal vaginal foreign body	2.12
57540		Removal of residual cervix	11.54
57545		Remove cervix, repair pelvis	12.30
58120		Dilation and curettage (D&C)	2.91
58140		Removal of uterus lesion	13.79
58150		Total hysterectomy	14.30

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
58180		Partial hysterectomy	14.30
58200		Extensive hysterectomy	20.34
58210		Extensive hysterectomy	27.50
58240		Removal of pelvis contents	35.27
58301		Remove intrauterine device	1.27
58323		Sperm washing	0.23
58410		Suspension of uterus	12.00
58520		Repair of ruptured uterus	11.11
58540		Revision of uterus	13.96
58720		Removal of ovary/tube(s)	10.68
58750		Repair oviduct(s)	14.26
58752		Revise ovarian tube(s)	14.26
58760		Remove tubal obstruction	12.50
58770		Create new tubal opening	13.34
58822		Drainage of ovarian abscess	9.06
58925		Removal of ovarian cyst(s)	10.68
58952		Resect ovarian malignancy	23.35
58960		Exploration of abdomen	13.66
59100		Remove uterus lesion	11.54
59120		Treat ectopic pregnancy	10.68
59121		Treat ectopic pregnancy	10.99
59130		Treat ectopic pregnancy	13.49
59136		Treat ectopic pregnancy	12.50
59841		Abortion	4.80
60225		Partial removal of thyroid	13.31
60240		Removal of thyroid	15.66
60252		Removal of thyroid	17.23
60254		Extensive thyroid surgery	22.50
61020		Remove brain cavity fluid	1.51
61026		Injection into brain canal	1.69
61105		Drill skull for examination	4.82
61106		Drill skull for exam/surgery	4.62
61107		Drill skull for implantation	5.00
61108		Drill skull for drainage	9.00
61120		Pierce skull for examination	8.00
61210		Pierce skull; implant device	5.84
61215		Insert brain-fluid device	4.00
61250		Pierce skull & explore	9.40
61253		Pierce skull & explore	11.27
61312		Open skull for drainage	21.83
61313		Open skull for drainage	22.50
61330		Decompress eye socket	21.55
61340		Relieve cranial pressure	17.33
61470		Incise skull for surgery	24.60
61480		Incise skull for surgery	25.03
61490		Incise skull for surgery	24.20
61510		Removal of brain lesion	26.77
61512		Remove brain lining lesion	33.51
61518		Removal of brain lesion	35.59
61519		Remove brain lining lesion	39.58
61520		Removal of brain lesion	52.98
61521		Removal of brain lesion	42.20
61526		Removal of brain lesion	50.59
61531		Implant brain electrodes	12.95
61533		Implant brain electrodes	18.05
61536		Removal of brain lesion	33.49
61538		Removal of brain tissue	25.09
61539		Removal of brain tissue	30.05
61542		Removal of brain tissue	29.05

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
61543		Removal of brain tissue	27.32
61545		Excision of brain tumor	41.76
61576		Skull base/brainstem surgery	50.08
61680		Intracranial vessel surgery	29.13
61682		Intracranial vessel surgery	59.47
61684		Intracranial vessel surgery	38.23
61686		Intracranial vessel surgery	62.08
61690		Intracranial vessel surgery	27.80
61692		Intracranial vessel surgery	49.74
61700		Inner skull vessel surgery	48.30
61702		Inner skull vessel surgery	46.31
61720		Incise skull/brain surgery	15.92
61735		Incise skull/brain surgery	18.72
61750		Incise skull; brain biopsy	16.67
61751		Brain biopsy with cat scan	16.66
61760		Implant brain electrodes	21.00
61770		Incise skull for treatment	19.78
61791		Treat trigeminal tract	13.99
61793		Focus radiation beam	16.70
61850		Implant neuroelectrodes	11.50
61855		Implant neuroelectrodes	12.50
61860		Implant neuroelectrodes	19.60
61865		Implant neuroelectrodes	21.70
61870		Implant neuroelectrodes	13.67
61875		Implant neuroelectrodes	13.79
61885		Implant neuroreceiver	5.28
61888		Revise/remove neuroreceiver	4.67
62180		Establish brain cavity shunt	19.71
62194		Replace/irrigate catheter	4.50
62200		Establish brain cavity shunt	17.33
62201		Establish brain cavity shunt	13.54
62223		Establish brain cavity shunt	11.96
62268		Drain spinal cord cyst	4.74
62269		Needle biopsy spinal cord	5.02
62275		Inject spinal anesthetic	1.79
62287		Percutaneous diskectomy	7.43
62290		Inject for spine disk x-ray	3.00
62294		Injection into spinal artery	10.95
63005		Removal of spinal lamina	13.88
63011		Removal of spinal lamina	13.40
63015		Removal of spinal lamina	17.77
63017		Removal of spinal lamina	14.90
63020		Neck spine disk surgery	13.77
63030		Low back disk surgery	11.10
63042		Low back disk surgery	16.56
63047		Removal of spinal lamina	13.57
63057		Decompress spinal cord	5.26
63075		Neck spine disk surgery	18.50
63087		Removal of vertebral body	33.91
63655		Implant neuroelectrodes	9.30
63740		Install spinal shunt	10.37
63741		Install spinal shunt	7.57
63744		Revision of spinal shunt	7.34
64443		Injection for nerve block	0.98
64623		Injection treatment of nerve	0.99
64718		Revise ulnar nerve at elbow	5.48
64721		Carpal tunnel surgery	3.99
64734		Incision of cheek nerve	4.50
64736		Incision of chin nerve	4.40

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
64763		Incise hip/thigh nerve	6.62
65101		Removal of eye	6.52
65105		Remove eye/attach implant	7.82
65205		Remove foreign body from eye	0.71
65430		Corneal smear	1.47
65450		Treatment of corneal lesion	3.07
65710		Corneal transplant	11.75
65730		Corneal transplant	13.50
65750		Corneal transplant	14.25
65755		Corneal transplant	14.25
65820		Relieve inner eye pressure	7.60
65855		Laser surgery of eye	4.15
66170		Glaucoma surgery	11.26
66172		Incision of eye	13.62
66180		Implant eye shunt	14.00
66821		After cataract laser surgery	2.15
66825		Reposition intraocular lens	7.73
66830		Removal of lens lesion	7.80
66840		Removal of lens material	7.51
66850		Removal of lens material	8.66
66852		Removal of lens material	9.52
66920		Extraction of lens	8.46
66930		Extraction of lens	9.73
66940		Extraction of lens	8.48
66983		Remove cataract, insert lens	8.54
66984		Remove cataract, insert lens	9.89
66985		Insert lens prosthesis	7.89
66986		Exchange lens prosthesis	11.78
67005		Partial removal of eye fluid	5.50
67015		Release of eye fluid	6.69
67210		Treatment of retinal lesion	9.48
67312		Revise two eye muscles	8.19
67316		Revise two eye muscles	9.26
67420		Explore/treat eye socket	19.00
67900		Repair brow defect	5.84
67904		Repair eyelid defect	5.96
67911		Revise eyelid defect	5.09
67924		Repair eyelid defect	5.64
67966		Revision of eyelid	6.39
68720		Create tear sac drain	8.56
68745		Create tear duct drain	8.23
68750		Create tear duct drain	8.21
68825		Explore tear duct system	1.53
68830		Reopen tear duct channel	2.12
69100		Biopsy of external ear	0.81
69110		Partial removal external ear	3.34
69150		Extensive ear canal surgery	13.01
69155		Extensive ear/neck surgery	19.09
69320		Rebuild outer ear canal	16.60
69530		Extensive mastoid surgery	18.04
69535		Remove part of temporal bone	34.50
69554		Remove ear lesion	31.27
69605		Mastoid surgery revision	18.04
69660		Revise middle ear bone	11.64
69661		Revise middle ear bone	15.32
69662		Revise middle ear bone	15.04
69725		Release facial nerve	24.01
69805		Explore inner ear	13.18
69930		Implant cochlear device	16.13

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
69950		Incise inner ear nerve	24.21
69955		Release facial nerve	25.54
69960		Release inner ear canal	25.54
69970		Remove inner ear lesion	28.54
70030	26	X-ray eye for foreign body	0.17
70100	26	X-ray exam of jaw	0.18
70110	26	X-ray exam of jaw	0.25
70120	26	X-ray exam of mastoids	0.18
70130	26	X-ray exam of mastoids	0.34
70140	26	X-ray exam of facial bones	0.19
70150	26	X-ray exam of facial bones	0.26
70160	26	X-ray exam of nasal bones	0.17
70170	26	X-ray exam of tear duct	0.30
70210	26	X-ray exam of sinuses	0.17
70220	26	X-ray exam of sinuses	0.25
70250	26	X-ray exam of skull	0.24
70260	26	X-ray exam of skull	0.34
70300	26	X-ray exam of teeth	0.10
70310	26	X-ray exam of teeth	0.16
70320	26	Full mouth x-ray of teeth	0.22
70328	26	X-ray exam of jaw joint	0.18
70330	26	X-ray exam of jaw joints	0.24
70332	26	X-ray exam of jaw joint	0.54
70336	26	Magnetic image jaw joint	1.48
70350	26	X-ray head for orthodontia	0.17
70355	26	Panoramic x-ray of jaws	0.20
70360	26	X-ray exam of neck	0.17
70380	26	X-ray exam of salivary gland	0.17
70390	26	X-ray exam of salivary duct	0.38
70450	26	CAT scan of head or brain	0.85
70460	26	Contrast CAT scan of head	1.13
70470	26	Contrast CAT scans of head	1.27
70480	26	CAT scan of skull	1.28
70481	26	Contrast CAT scan of skull	1.38
70482	26	Contrast CAT scans of skull	1.45
70486	26	CAT scan of face, jaw	1.14
70487	26	Contrast CAT scan, face/jaw	1.30
70488	26	Contrast CAT scans face/jaw	1.42
70490	26	CAT scan of neck tissue	1.28
70491	26	Contrast CAT of neck tissue	1.38
70492	26	Contrast CAT of neck tissue	1.45
70540	26	Magnetic image, face, neck	1.48
70551	26	Magnetic image, brain (MRI)	1.48
70552	26	Magnetic image, brain (MRI)	1.78
70553	26	Magnetic image, brain	2.36
71010	26	Chest x-ray	0.18
71015	26	X-ray exam of chest	0.21
71020	26	Chest x-ray	0.22
71021	26	Chest x-ray	0.27
71022	26	Chest x-ray	0.31
71035	26	Chest x-ray	0.18
71040	26	Contrast x-ray of bronchi	0.58
71060	26	Contrast x-ray of bronchi	0.74
71100	26	X-ray exam of ribs	0.22
71101	26	X-ray exam of ribs, chest	0.27
71110	26	X-ray exam of ribs	0.27
71111	26	X-ray exam of ribs, chest	0.32
71120	26	X-ray exam of breastbone	0.20
71130	26	X-ray exam of breastbone	0.22

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
71250	26	Cat scan of chest	1.16
71260	26	Contrast CAT scan of chest	1.24
71270	26	Contrast CAT scans of chest	1.38
71550	26	Magnetic image, chest	1.60
72020	26	X-ray exam of spine	0.15
72040	26	X-ray exam of neck spine	0.22
72050	26	X-ray exam of neck spine	0.31
72069	26	X-ray exam of trunk spine	0.22
72070	26	X-ray exam of thorax spine	0.22
72072	26	X-ray exam of thoracic spine	0.22
72074	26	X-ray exam of thoracic spine	0.22
72080	26	X-ray exam of trunk spine	0.22
72090	26	X-ray exam of trunk spine	0.28
72100	26	X-ray exam of lower spine	0.22
72110	26	X-ray exam of lower spine	0.31
72114	26	X-ray exam of lower spine	0.36
72120	26	X-ray exam of lower spine	0.22
72125	26	CAT scan of neck spine	1.16
72126	26	Contrast CAT scan of neck	1.22
72127	26	Contrast CAT scans of neck	1.27
72128	26	CAT scan of thorax spine	1.16
72129	26	Contrast CAT scan of thorax	1.22
72130	26	Contrast CAT scans of thorax	1.27
72131	26	CAT scan of lower spine	1.16
72132	26	Contrast CAT of lower spine	1.22
72133	26	Contrast CAT scans,low spine	1.27
72141	26	Magnetic image, neck spine	1.60
72142	26	Magnetic image, neck spine	1.92
72146	26	Magnetic image, chest spine	1.60
72147	26	Magnetic image, chest spine	1.92
72148	26	Magnetic image, lumbar spine	1.48
72149	26	Magnetic image, lumbar spine	1.78
72156	26	Magnetic image, neck spine	2.57
72157	26	Magnetic image, chest spine	2.57
72158	26	Magnetic image, lumbar spine	2.36
72170	26	X-ray exam of pelvis	0.17
72190	26	X-ray exam of pelvis	0.21
72192	26	CAT scan of pelvis	1.09
72193	26	Contrast CAT scan of pelvis	1.16
72194	26	Contrast CAT scans of pelvis	1.22
72196	26	Magnetic image, pelvis	1.60
72200	26	X-ray exam sacroiliac joints	0.17
72202	26	X-ray exam sacroiliac joints	0.19
72220	26	X-ray exam of tailbone	0.17
72265	26	Contrast x-ray lower spine	0.83
73000	26	X-ray exam of collarbone	0.16
73010	26	X-ray exam of shoulder blade	0.17
73020	26	X-ray exam of shoulder	0.15
73030	26	X-ray exam of shoulder	0.18
73040	26	Contrast x-ray of shoulder	0.54
73050	26	X-ray exam of shoulders	0.20
73060	26	X-ray exam of humerus	0.17
73070	26	X-ray exam of elbow	0.15
73080	26	X-ray exam of elbow	0.17
73085	26	Contrast x-ray of elbow	0.54
73090	26	X-ray exam of forearm	0.16
73092	26	X-ray exam of arm, infant	0.16
73100	26	X-ray exam of wrist	0.16
73110	26	X-ray exam of wrist	0.17

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
73115	26	Contrast x-ray of wrist	0.54
73120	26	X-ray exam of hand	0.16
73130	26	X-ray exam of hand	0.17
73140	26	X-ray exam of finger(s)	0.13
73200	26	CAT scan of arm	1.09
73201	26	Contrast CAT scan of arm	1.16
73202	26	Contrast CAT scans of arm	1.22
73220	26	Magnetic image, arm, hand	1.48
73221	26	Magnetic image, joint of arm	1.48
73225	26	Magnetic imaging/upper (MRA)	1.73
73500	26	X-ray exam of hip	0.17
73510	26	X-ray exam of hip	0.21
73520	26	X-ray exam of hips	0.26
73525	26	Contrast x-ray of hip	0.54
73530	26	X-ray exam of hip	0.29
73540	26	X-ray exam of pelvis & hips	0.20
73550	26	X-ray exam of thigh	0.17
73560	26	X-ray exam of knee	0.17
73562	26	X-ray exam of knee	0.18
73564	26	X-ray exam of knee	0.22
73565	26	X-ray exam of knee	0.17
73580	26	Contrast x-ray of knee joint	0.54
73590	26	X-ray exam of lower leg	0.17
73592	26	X-ray exam of leg, infant	0.16
73600	26	X-ray exam of ankle	0.16
73610	26	X-ray exam of ankle	0.17
73615	26	Contrast x-ray of ankle	0.54
73620	26	X-ray exam of foot	0.16
73630	26	X-ray exam of foot	0.17
73650	26	X-ray exam of heel	0.16
73660	26	X-ray exam of toe(s)	0.13
73700	26	CAT scan of leg	1.09
73701	26	Contrast CAT scan of leg	1.16
73702	26	Contrast CAT scans of leg	1.22
73720	26	Magnetic image, leg, foot	1.48
73721	26	Magnetic image, joint of leg	1.48
74000	26	X-ray exam of abdomen	0.18
74010	26	X-ray exam of abdomen	0.23
74020	26	X-ray exam of abdomen	0.27
74022	26	X-ray exam series, abdomen	0.32
74150	26	CAT scan of abdomen	1.19
74160	26	Contrast CAT scan of abdomen	1.27
74170	26	Contrast CAT scans, abdomen	1.40
74181	26	Magnetic image, abdomen (MRI	1.60
74330	26	Xray,bile/pancreas endoscopy	0.90
74360	26	X-ray guide, GI dilation	0.54
74710	26	X-ray measurement of pelvis	0.34
75552	26	Magnetic image, myocardium	1.60
75553	26	Magnetic image, myocardium	2.00
75554	26	Cardiac MRI/function	1.83
75555	26	Cardiac MRI/limited study	1.74
75556		Cardiac MRI/flow mapping	0.00
75630	26	X-ray aorta, leg arteries	1.79
76066	26	Joint(s) survey, single film	0.31
76090	26	Mammogram, one breast	0.58
76091	26	Mammogram, both breasts	0.69
76093	26	Magnetic image, breast	1.63
76094	26	Magnetic image, both breasts	1.63
76098	26	X-ray exam, breast specimen	0.16

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
76355	26	CAT scan for localization	1.21
76360	26	CAT scan for needle biopsy	1.16
76365	26	CAT scan for cyst aspiration	1.16
76370	26	CAT scan for therapy guide	0.85
76375	26	CAT scans, other planes	0.16
76380	26	CAT scan follow-up study	0.98
76400	26	Magnetic image, bone marrow	1.60
76825	26	Echo exam of fetal heart	1.67
77420		Weekly radiation therapy	1.61
77425		Weekly radiation therapy	2.44
77430		Weekly radiation therapy	3.60
77761	26	Radioelement application	3.56
78070	26	Parathyroid nuclear imaging	0.82
78075	26	Adrenal nuclear imaging	0.74
78195	26	Lymph system imaging	1.20
78480	26	Heart function, (add-on)	0.62
78635	26	CSF ventriculography	0.61
78803	26	Tumor imaging (3D)	1.09
78805	26	Abscess imaging, ltd area	0.73
78806	26	Abscess imaging, whole body	0.73
83020	26	Assay hemoglobin	0.37
83912	26	Genetic examination	0.37
84165	26	Assay serum proteins	0.37
84181	26	Western blot test	0.37
84182	26	Protein, western blot test	0.37
85095		Bone marrow aspiration	1.08
85102		Bone marrow biopsy	1.37
85390	26	Fibrinolysins screen	0.37
85576	26	Blood platelet aggregation	0.37
86077		Physician blood bank service	0.94
86079		Physician blood bank service	0.94
86255	26	Fluorescent antibody; screen	0.37
86256	26	Fluorescent antibody; titer	0.37
86320	26	Serum immunoelectrophoresis	0.37
86325	26	Other immunoelectrophoresis	0.37
86327	26	Immunoelectrophoresis assay	0.37
86334	26	Immunofixation procedure	0.37
88170	26	Fine needle aspiration	1.27
88171	26	Fine needle aspiration	1.27
88172	26	Evaluation of smear	0.60
88173	26	Interpretation of smear	1.08
88180	26	Cell marker study	0.36
88182	26	Cell marker study	0.77
88311	26	Decalcify tissue	0.24
89060	26	Exam,synovial fluid crystals	0.37
90801		Psychiatric interview	2.21
90820		Diagnostic interview	2.27
90825		Evaluation of tests/records	0.97
90835		Special interview	2.84
90842		Psychotherapy, 75-80 min	2.76
90843		Psychotherapy 20-30 min.	1.11
90844		Psychotherapy 45-50 min.	1.73
90845		Medical psychoanalysis	1.79
90846		Special family therapy	1.83
90847		Special family therapy	2.21
90853		Special group therapy	0.43
90855		Individual psychotherapy	1.82
90857		Special group therapy	0.43
90862		Medication management	0.95

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
90870		Electroconvulsive therapy	1.88
90871		Electroconvulsive therapy	2.72
90880		Medical hypnotherapy	2.19
90887		Consultation with family	1.48
90900		Biofeedback, electromyogram	0.89
90902		Biofeedback, nerve impulse	0.43
90904		Biofeedback, blood pressure	0.43
90906		Biofeedback, blood flow	0.43
90908		Biofeedback, brain waves	0.43
90910		Biofeedback, oculogram	0.43
90911		Anorectal biofeedback	0.89
90915		Biofeedback, unspecified	0.89
91000	26	Esophageal intubation	0.73
91010	26	Esophagus motility study	1.25
91011	26	Esophagus motility study	1.50
91012	26	Esophagus motility study	1.46
91020	26	Esophagogastric study	1.44
91030	26	Acid perfusion of esophagus	0.91
91032	26	Esophagus, acid reflux test	1.21
91033	26	Prolonged acid reflux test	1.30
91052	26	Gastric analysis test	0.79
91055	26	Gastric intubation for smear	0.94
91065	26	Breath hydrogen test	0.20
91122	26	Anal pressure record	1.77
92002		Eye exam, new patient	0.88
92004		Eye exam, new patient	1.34
92012		Eye exam established pt	0.67
92014		Eye exam & treatment	1.10
92018		New eye exam & treatment	1.51
92019		Eye exam & treatment	1.31
92020		Special eye evaluation	0.37
92060	26	Special eye evaluation	0.69
92065	26	Orthoptic/pleoptic training	0.37
92070		Fitting of contact lens	0.70
92225		Special eye exam, initial	0.58
92226		Special eye exam, subsequent	0.50
92260		Ophthalmoscopy/dynamometry	0.50
92275	26	Electroretinography	1.01
92283	26	Color vision examination	0.17
92284	26	Dark adaptation eye exam	0.24
92506		Speech & hearing evaluation	0.86
92507		Speech/hearing therapy	0.52
92508		Speech/hearing therapy	0.26
92512		Nasal function studies	0.55
92541	26	Spontaneous nystagmus test	0.40
92542	26	Positional nystagmus test	0.33
92543	26	Caloric vestibular test	0.38
92544	26	Optokinetic nystagmus test	0.26
92545	26	Oscillating tracking test	0.23
92546	26	Torsion swing recording	0.29
92585	26	Brainstem evoked audiometry	0.50
93000		Electrocardiogram, complete	0.17
93010		Electrocardiogram report	0.17
93278	26	ECG/signal-averaged	0.25
93307	26	Echo exam of heart	0.78
93312	26	Echo exam of heart	1.90
93320	26	Doppler echo exam, heart	0.38
93503		Insert/place heart catheter	2.43
93505	26	Biopsy of heart lining	4.38

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
93510	26	Left heart catheterization	4.33
93526	26	Rt & Lt heart catheters	5.99
93527	26	Rt & Lt heart catheters	7.28
93529	26	Rt, Lt heart catheterization	4.80
93539		Injection, cardiac cath	0.40
93544		Injection for aortography	0.25
93545		Injection for coronary xrays	0.40
93561	26	Cardiac output measurement	0.50
93562	26	Cardiac output measurement	0.16
93621	26	Electrophysiology evaluation	12.66
93641	26	Electrophysiology evaluation	5.93
93733	26	Telephone analysis,pacemaker	0.17
93875	26	Extracranial study	0.22
93880	26	Extracranial study	0.60
93882	26	Extracranial study	0.40
93922	26	Extremity study	0.25
93923	26	Extremity study	0.45
93924	26	Extremity study	0.50
93925	26	Lower extremity study	0.58
93926	26	Lower extremity study	0.39
93930	26	Upper extremity study	0.46
93931	26	Upper extremity study	0.31
93965	26	Extremity study	0.35
93970	26	Extremity study	0.68
93971	26	Extremity study	0.45
93980	26	Penile vascular study	1.25
93981	26	Penile vascular study	0.44
94060	26	Evaluation of wheezing	0.31
94150	26	Vital capacity test	0.11
94160	26	Vital capacity screening	0.18
94240	26	Residual lung capacity	0.26
94350	26	Lung nitrogen washout curve	0.26
94360	26	Measure airflow resistance	0.26
94375	26	Respiratory flow volume loop	0.31
94400	26	CO2 breathing response curve	0.40
94720	26	Monoxide diffusing capacity	0.26
94725	26	Membrane diffusion capacity	0.26
94770	26	Exhaled carbon dioxide test	0.15
95010		Sensitivity skin tests	0.15
95015		Sensitivity skin tests	0.15
95075		Ingestion challenge test	0.95
95851		Range of motion measurements	0.16
95852		Range of motion measurements	0.11
95867	26	Muscle test, head or neck	0.79
95868	26	Muscle test, head or neck	1.18
95872	26	Muscle test, one fiber	1.50
95937	26	Neuromuscular junction test	0.65
95951	26	EEG monitoring/videorecord	6.00
96405		Intralesional chemo admin	0.52
96406		Intralesional chemo admin	0.80
96440		Chemotherapy, intracavitary	2.37
96445		Chemotherapy, intracavitary	2.20
96450		Chemotherapy, into CNS	1.89
97250		Myofascial release	0.45
97260		Regional manipulation	0.19
97261		Supplemental manipulations	0.12
97500		Orthotics training	0.31
97501		Supplemental training	0.17
97520		Prosthetic training	0.37

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
97521		Supplemental training	0.22
98925		Osteopathic manipulation	0.45
98926		Osteopathic manipulation	0.65
98927		Osteopathic manipulation	0.87
98928		Osteopathic manipulation	1.03
98929		Osteopathic manipulation	1.19
99201		Office/outpatient visit, new	0.45
99202		Office/outpatient visit, new	0.88
99203		Office/outpatient visit, new	1.34
99204		Office/outpatient visit, new	2.00
99205		Office/outpatient visit, new	2.67
99211		Office/outpatient visit, est	0.17
99212		Office/outpatient visit, est	0.45
99213		Office/outpatient visit, est	0.67
99214		Office/outpatient visit, est	1.10
99215		Office/outpatient visit, est	1.77
99217		Observation care discharge	1.28
99218		Observation care	1.28
99219		Observation care	2.14
99220		Observation care	2.99
99221		Initial hospital care	1.28
99222		Initial hospital care	2.14
99223		Initial hospital care	2.99
99231		Subsequent hospital care	0.64
99232		Subsequent hospital care	1.06
99233		Subsequent hospital care	1.51
99238		Hospital discharge day	1.28
99239		Hospital discharge day	1.75
99241		Office consultation	0.64
99242		Office consultation	1.28
99243		Office consultation	1.71
99244		Office consultation	2.56
99245		Office consultation	3.41
99251		Initial inpatient consult	0.66
99252		Initial inpatient consult	1.32
99253		Initial inpatient consult	1.82
99254		Initial inpatient consult	2.64
99255		Initial inpatient consult	3.65
99261		Follow-up inpatient consult	0.42
99262		Follow-up inpatient consult	0.85
99263		Follow-up inpatient consult	1.27
99271		Confirmatory consultation	0.45
99272		Confirmatory consultation	0.84
99273		Confirmatory consultation	1.19
99274		Confirmatory consultation	1.73
99275		Confirmatory consultation	2.31
99281		Emergency dept visit	0.33
99282		Emergency dept visit	0.55
99283		Emergency dept visit	1.24
99284		Emergency dept visit	1.95
99285		Emergency dept visit	3.06
99291		Critical care, first hour	4.00
99292		Critical care, addl 30 min	2.00
99295		Neonatal critical care	16.00
99296		Neonatal critical care	8.00
99297		Neonatal critical care	4.00
99301		Nursing facility care	1.28
99302		Nursing facility care	1.71
99303		Nursing facility care	2.14

Codes Subject to Comment

CPT/HCPCS Code *	Mod	Description	Proposed RVUs
99311		Nursing facility care,subseq	0.64
99312		Nursing facility care,subseq	1.06
99313		Nursing facility care,subseq	1.51
99341		Home visit, new patient	1.34
99342		Home visit, new patient	2.00
99343		Home visit, new patient	2.67
99351		Home visit, estab patient	0.67
99352		Home visit, estab patient	1.10
99353		Home visit, estab patient	1.77
99354		Prolonged service, office	1.77
99355		Prolonged service, office	1.77
99356		Prolonged service, inpatient	1.71
99357		Prolonged service, inpatient	1.71
99375		Care plan oversight/30-60	1.73
99381		Preventive visit, new, infant	1.19
99382		Preventive visit, new, age 1-4	1.36
99383		Preventive visit, new, age 5-11	1.36
99384		Preventive visit, new, age 12-17	1.53
99385		Preventive visit, new, age 18-39	1.53
99386		Preventive visit, new, age 40-64	1.88
99387		Preventive visit, new, age 65 & over	2.06
99391		Preventive visit, est, infant	1.02
99392		Preventive visit, est, age 1-4	1.19
99393		Preventive visit, est, age 5-11	1.19
99394		Preventive visit, est, age 12-17	1.36
99395		Preventive visit, est, age 18-39	1.36
99396		Preventive visit, est, age 40-64	1.53
99397		Preventive visit, est, age 65 & over	1.71
99401		Preventive counseling, indiv	0.48
99402		Preventive counseling, indiv	0.98
99403		Preventive counseling, indiv	1.46
99404		Preventive counseling, indiv	1.95
99411		Preventive counseling, group	0.15
99412		Preventive counseling, group	0.25
99431		Initial care, normal newborn	1.17
99432		Newborn care not in hospital	1.26
99433		Normal newborn care, hospital	0.62
99435		Hospital NB discharge day	1.50
99440		Newborn resuscitation	2.93

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Part V

Railroad Retirement Board

20 CFR Part 345

Employers' Contributions and Contribution Reports; Final Rule

RAILROAD RETIREMENT BOARD

20 CFR Part 345

RIN 3220–AA79

Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board hereby revises its regulations under the Railroad Unemployment Insurance Act in order to implement amendments to that Act in 1988 to provide for employers under the RUIA to pay unemployment contributions on the basis of an experience rating system. Prior to amendment, all employers paid contributions at the same rate.

EFFECTIVE DATE: May 3, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, Bureau of Law, Chicago, Illinois 60611; (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Benefits under the Railroad Unemployment Insurance Act (RUIA) are funded by contributions paid by employers, as defined in section 1(a) of the RUIA and part 301 of this chapter. For calendar years through 1990, all employers, with the exception of commuter railroads, paid contributions at the same rate. Title VII of Public Law 100–647 amended section 8(a) of the RUIA to provide for a contribution rate based upon an employer's experience. The experience rating system provided by section 8(a) of the RUIA is phased in beginning with calendar year 1991. For 1991 and 1992, a transitional rate of contribution applies to each employer. Effective January 1, 1993, each employer will have an experience-based rate of contribution. A ''new employer'' rate of contribution will be computed for an employer that first pays compensation after December 31, 1989.

The experience rating system that goes into effect January 1, 1993 is based upon recommendations made by the Railroad Unemployment Compensation Committee (RUCC), which was established by Section 504 of the Railroad Retirement Solvency Act of 1983 (Public Law 98–76). The RUCC was required to review all aspects of the unemployment insurance system under the RUIA, including the method by which benefit costs under the RUIA were funded. In its report dated June 29, 1984, the RUCC recommended that railroad unemployment insurance contributions be put on an experience rating system utilizing what is termed a ''reserve-benefit ratio method'' of measuring experience. The methodology contemplates that each employer will pay contributions at a rate consisting of a basic rate, plus 0.65 percent to cover the administrative expenses incurred by the Railroad Retirement Board, plus the amount of any surcharge that becomes applicable when the balance to the credit of the railroad unemployment insurance account declines to certain specified levels.

The basic rate referred to above consists of three components. The first component is the allocated-experience rate and is based upon benefit payments that are charged to each employer. The purpose of this rate is to ensure that each employer is ultimately responsible for the cost of benefits paid to its own employees. The second component is the unallocated-experience element, which covers benefit payments that are not chargeable to any employer. Its purpose is to ensure that responsibility for benefit charges that, by law, cannot be allocated to a single employer is fairly shared. The third component covers risk-shared benefit payments, that is, benefits that are chargeable to a base year employer but the contributions to cover the cost of those benefits cannot be collected immediately because of the imposition of a maximum contribution rate. Risk-sharing picks up the income that otherwise would be lost because of the maximum rate of contribution. Eventually, the lost income will be paid by the employers that were at the maximum rate because the reserve-ratio component assures that, over time, each employer will contribute amounts equal to all benefit payments charged to it.

This rule consists of five subparts. Subpart A contains some general provisions and definitions. Subpart B revises part 345 as it read prior to this revision and sets forth the requirements for filing reports of contributions and the manner in which contributions are to be collected.

Subpart C implements the provisions of section 8(a)(17) and (18) of the RUIA, which require the Board to establish individual employer records and to prescribe regulations relating to the establishment and discontinuance of joint employer records. Subpart C also prescribes the regulations required by section 8(a)(19) of the RUIA, relating to the establishment of employer records in the event of mergers, consolidations, or other changes in employer identity, including changes resulting from a sale or transfer of assets, reincorporation, or abandonment.

Subpart D explains the experience rating system under the RUIA and the methods that the Board will follow in computing each employer's rate of contribution under the experience rating system. This subpart also explains the computation of new employer contribution rates.

Subpart E explains how the Board will charge base year employers with benefit payments made under the RUIA, the handling of adjustments to those charges, and the process for notifying base year employers of the charges.

Section By Section Analysis

Subpart A—General Provisions and Definitions

Section 345.101 sets forth the general requirement that employers (except for a local lodge or division of a railway labor organization) covered under the RUIA must pay a contribution on compensation paid to their employees in order to fund unemployment and sickness benefits payable under that statute. It revises previous § 345.1.

Section 345.102 provides that where an employee is employed by two or more employers (other than a subordinate unit of a railway organization) the employers may prorate the amount of contributions due based upon the amount of compensation paid to the employee. It simplifies the provisions previously found in § 345.2(b).

Section 345.103 provides that an employer's rate of contributions shall be based upon his ''experience'' as defined in Subpart D. It revises the present § 345.2(a).

Section 345.105 is a new section and sets forth the statutory exception that exempts employee representatives, as defined in part 205 of this chapter, from paying contributions on their salaries. It also provides that contributions are the sole obligation of the employer and may not be deducted from the employee's wages.

Section 345.106 is a new section and contains definitions relevant to this part.

Subpart B—Reporting and Collecting Contributions

Section 345.110 follows § 345.4 of the previous regulation and provides that the reports of compensation filed under part 209 of this chapter shall be used to establish an employee's compensation record under the RUIA.

Section 345.111 is essentially the same as previous § 345.5 and provides for the filing of quarterly contribution

reports by employers. It eliminates annual reports and provides that an affiliated group of employers may file a consolidated quarterly contribution report.

Section 345.112 provides that an employer's final contribution report shall be filed within 60 days after the last payment of wages. It is essentially the same as previous § 345.6.

Section 345.113 provides that the contribution report must be filed by a responsible officer of the employer. It is the same as previous § 345.7.

Section 345.114 provides that the quarterly contribution report must be filed on a form approved by the Board unless the failure to use such form was due to reasonable cause and not due to willful neglect. It follows previous § 345.8.

Section 345.115 provides that an employer shall file the quarterly contributions report with the Chief Financial Officer on or before the last day of the month following the end of the quarter. It is essentially the same as the present § 345.9 except that the provisions for waiving interest or penalty resulting from a late report are found in §§ 345.122 and 345.123, respectively.

Section 345.116 simplifies previous § 345.10 and provides that payment or deposit of contributions due shall be in accordance with instructions provided by the Board.

Section 345.117 permits rounding to the nearest cent when paying contributions. It reflects a provision found in the RUIA and is identical to the previous § 345.11.

Section 345.118 provides that an employer who underpays or overpays his contributions may take an interest free adjustment on the contribution report due after discovery of the error. It is essentially the same as previous § 345.12, except that it contains a clarification providing that if an employer fails to adjust an underpayment in accordance with the section, he shall be liable for interest on the underpayment from the time the adjustment should have been made until the underpayment is made.

Section 345.119 provides that if an employer cannot adjust an overpayment of contributions as provided for in § 345.118, he may claim a refund for the overpayment. No claim for refund shall be honored if filed more than three years after the contribution report containing the error was required to be filed, or more than two years after payment of the erroneous contribution, whichever is later. This section follows previous § 345.13, but clarifies that no interest shall be paid on the refund and that any claim for refund shall be offset by any contributions due the Board by the employer claiming the refund. However, where the overpayment of contributions is the result of Board error in computing an employer's contribution rate under Subpart D, the Board will pay interest in accord with section 6621 of the Internal Revenue Code.

Section 345.120 revises previous § 345.14 and provides that if any contribution is not paid when due, the Board may assess the amount due (whether or not the deficiency is adjustable as an underpayment under § 345.118). The assessment is the creation of an account receivable by the Chief Financial Officer. The amount assessed may be collected, after notice and demand, by any remedy available under law, but must be collected within 10 years after assessment. In collecting an assessment, the Board may use any remedy available under the Internal Revenue Code for collecting railroad retirement taxes.

Section 345.121 is the same as previous § 345.15, which permits the Board to make an assessment of contributions (jeopardy assessment) before the return of contributions is due in order to protect the interest of the United States.

Section 345.122 follows previous § 345.15, which provides that interest of one percent a month, or fraction thereof, shall accrue on contributions not paid on time or not adjusted in a timely manner under § 345.118. Because the interest provision in the RUIA is really a penalty provision, that is, it assesses a fixed rate regardless of the market rate of interest, a new provision is added that permits the Chief Financial Officer to waive interest when equity warrants.

Section 345.123 follows previous § 345.19 and provides for penalties for delinquent and false contribution reports.

Section 345.124 is a new section and provides that an employer may seek administrative review of any determination made by the Chief Financial Officer with regard to amounts due under this part. A request for review, however, does not stay the employer's obligation to make or continue to file reports as required under this part.

Section 345.125 revises previous § 345.24 to alleviate the burden on employers to keep supporting records back to 1939. Under the regulation, an employer must keep records that support his contribution reports for five calendar years after the date the report was required to be filed.

Section 345.126 is identical to previous § 345.18 and provides that any amount due from an employer under this part is a lien on the employer's property in favor of the United States.

Subpart C—Individual Employer Records

Section 345.201 provides that effective January 1, l990, the Board will establish a ''record'' for each employer composed of the employer's contribution and benefit ''experience'' and his share of the system ''experience'' to determine the employer's experience-based contribution rate.

Section 345.202 provides that two or more employers under common control may consolidate their respective employer records and be treated as one employer.

Section 345.203 provides that in the event of a merger of two employers, the surviving employer's record shall consist of the combination of the individual employer records of the employers participating in the merger.

Section 345.204 embodies the so-called ''successor employer rule'' and provides that in the case of sale or transfer of assets by an employer, the record of the selling employer shall be transferred to the purchaser. If less than substantially all the assets are sold or transferred, the record shall be transferred in accordance with the agreement of sale, subject to Board approval.

Section 345.205 provides that a reorganization that does not involve a merger does not affect the employer records of the entities involved in the reorganization.

Section 345.206 provides that an employer who first pays compensation after December 31, 1989, shall continue to maintain an employer record during the period of inactivity.

Section 345.207 provides that in the case of an employer who permanently ceases operations (defunct employer), that employer's net cumulative contribution balance and net cumulative benefit balance shall be transferred to the system unallocated charge balance, that is, the employer's ''experience'' is spread among all employers.

Section 345.208 provides that the Board shall publish annually notice of the system unallocated charges and credits.

Subpart D—Contribution Rates

Section 345.301 provides that effective January 1, l993, each employer's contribution rate will be computed based upon his benefit and

contribution experience as computed under this subpart.

Section 345.302 defines the words and phrases used in computing experience-rated contributions.

Section 345.303 sets forth in a step-by-step manner the computation of the experience rate.

Section 345.304 provides that new employers, as defined therein, shall have a phased-in experience rate and sets forth the computation of this rate.

Section 345.305 provides that annually the Board shall notify each employer of his contribution rate as computed under this subpart and of the components that make up that rate.

Section 345.306 provides that upon request the Board will make available to each employer the data used to determine the employer's contribution rate.

Section 345.307 provides a procedure under which an employer may protest his rate. Such procedure may include a hearing, and any final decision of the Board is subject to judicial review. During pendency of the appeal, the employer shall pay at the protested rate. Should the employer prevail in the protest, he will be refunded the overpaid contributions or may take a credit in the amount of the overpayment against future contributions due as provided for in § 345.118 of this part.

Subpart E—Benefit Charging

Section 345.401 provides that all benefits paid to an employee for his or her days of unemployment or sickness will be charged to the base year employer of the employee.

Section 345.402 provides that unemployment benefits paid for days of unemployment resulting from a strike or work stoppage will not be charged to the employee's base year employer, but shall be charged to the system unallocated charge balance.

Section 345.403 explains how benefits paid are charged if the employee had more than one base year employer.

Section 345.404 provides that benefits previously charged shall be adjusted if later recovered by the Board because they were erroneously paid. However, no adjustment shall be made where recovery of the benefits has been waived, or to the extent that recovery is not made because the debt is determined uncollectible or because it was compromised.

Section 345.405 provides that the Board will notify an employer when a claim for benefits is made and when such benefits are paid. In addition, each quarter the Board will provide each employer with a report of its cumulative benefit balance.

Section 345.406 provides that the cumulative benefit balance of a defunct employer shall be added to the system unallocated charge balance.

On August 18, 1995, the Board published this rule as a proposed rule (60 FR 43300), inviting comments on or before October 17, 1995. No comments were received.

In reviewing the proposed rule prior to its publication as a final rule, clarification of certain provisions, as enumerated below, was found necessary.

The second sentence of Step 1 of § 345.302(j), which explains the computation of the pooled charge ratio, was changed to remove: ‘‘, 345.304, or 345.308 * * *, whichever is applicable’’. A ‘‘pooled charge’’ is added only to the contribution rate computed under § 345.303 and is not added to a new employer rate of computation, as computed under § 345.304, except to the extent that a new employer rate, as phased in, reflects its experience with respect to periods after the period during which it has an initial contribution rate, as computed in § 345.304(b). Also, there is no § 345.308.

The first sentence of § 345.302(k), relating to computation of pooled credits, was amended to add the language ‘‘, as computed under § 345.303 of this part,’’ to clarify that a new employer is not entitled to a pooled credit since a new employer's rate is computed under the special provisions of § 345.303(b) and not under the regular formula found in § 345.303(a), which provides for the application of the pooled credit at Step 3.

The first sentence of § 345.302(n), relating to surcharge rates, was amended to add the language ‘‘, as computed under § 345.303 of this part,’’ to clarify that a surcharge rate, when applicable, will be added only at Step 6 of § 345.303(a) and not to the rate, if any, as computed under § 345.304(b).

The Labor Member of the Railroad Retirement Board does not support the authority contained in § 345.118(c)(3) of the regulation for the payment of interest, under certain circumstances, to railroad employers who have overpaid their contributions due under the Railroad Unemployment Insurance Act. There is no express statutory language in the Railroad Unemployment Insurance Act authorizing the payment of interest, but rather, the authority is derived from a provision in the Internal Revenue Code, which is incorporated by reference. The Labor Member is of the opinion that the regulation should follow the current regulation of the Railroad Retirement Board, which does not provide for the payment of interest. In addition to the lack of express statutory authority for the payment of interest, the Labor Member believes that it is inequitable to authorize the payment of interest to railroad employers who have overpaid their contributions when there is no authority for the Railroad Retirement Board to pay interest to beneficiaries who have been underpaid benefits under the Railroad Retirement and Railroad Unemployment Insurance Acts.

The Board has determined that this is not a major rule under Executive Order No. 12866; therefore no regulatory impact analysis is required. The information collection requirements contained in this rule have been approved by the Office of Management and Budget under control numbers 3220–0008 and 3220–0012.

List of Subjects in 20 CFR Part 345

Railroad employers, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

1. Part 345 is revised to read as follows:

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

Subpart A—General Provisions and Definitions

Sec.

Subpart B—Reporting and Collecting Contributions

Authority: 45 U.S.C. 362(l).

Subpart A—General Provisions and Definitions

§ 345.101 Requirement for contribution.

Every employer, as defined in part 301 of this chapter, shall pay to the Railroad Retirement Board a contribution with respect to the compensation paid to an employee in any calendar month for service by such employee (except for service to a local lodge or division of a railway labor organization). For the purposes of this part, the term ''compensation'' is defined in part 302 of this chapter. The compensation subject to contribution is the gross amount of compensation paid to an employee for service in any month, not to exceed the amount of the monthly compensation base (MCB), as defined in part 302 of this chapter. The amount of contribution payable by each employer is to be computed and paid pursuant to the provisions of this part.

§ 345.102 Multiple employer limitation.

(a) The contributions required by this part shall not apply to any amount of the aggregate compensation paid to such employee by all such employers in such calendar month which is in excess of the MCB; and

(b) Each employer (other than a subordinate unit of a national-railway-labor-organization employer) shall be liable for that portion of the contribution with respect to such compensation paid by all such employers which the compensation paid by the employer to such employee bears to the total compensation paid in such month by all such employers to such employee.

(c) In the event that the compensation paid by such employers to the employee in such month is less than the MCB, each subordinate unit of a national-railway-labor-organization employer shall be liable for such portion of any additional contribution as the compensation paid by such employer to such employee in such month bears to the total compensation paid by all national-railway-labor-organization employers to such employee in such month.

§ 345.103 Rate of contribution.

(a) Each employer will have an experience-rated rate of contribution computed by the Board under the provisions of section 8(a)(1)(C) of the Railroad Unemployment Insurance Act. See Subpart D of this part.

(b) Notwithstanding paragraph (a) of this section the rate of contribution applicable to an employer that first becomes subject to this part after December 31, 1989, will be computed by the Board in accordance with section 8(a)(1)(D) of the Railroad Unemployment Insurance Act. See Subpart D of this part.

§ 345.104 Employees and employee representatives not liable.

The amount of contributions for which an employer is liable under this part shall not be deducted from an employee's compensation, and the Board will not recognize any agreement under which an employee assumes liability for such contributions. Employee representatives under part 205 of this chapter are not employees for purposes of the Railroad Unemployment Insurance Act and are not liable for payment of contributions under this part.

§ 345.105 Definitions.

(a) *Chief Financial Officer.* References in this part to the Board's Chief Financial Officer mean the Chief Financial Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611. The Chief Financial Officer shall be responsible for assessing, collecting, and depositing contributions due from employers under this part.

(b) *Monthly compensation base.* For the purposes of this part, the monthly compensation base (MCB) is the maximum monthly amount of compensation per employee that is subject to contribution pursuant to this part. On or before December 1 of each year, the Board will compute the amount of the MCB in accordance with section 1(i) of the Railroad Unemployment Insurance Act and part 302 of this chapter, and will publish notice of the amount so computed in the Federal Register within 10 days after such computation has been made. Information as to the amount of the MCB should be requested from the Board's Chief Financial Officer.

(c) *Month defined.* (1) For the purposes of this part, if the date prescribed for filing a report or paying a contribution is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file or pay the contribution continues shall constitute a month.

(2) If the date prescribed for filing the report or paying the contribution is a date other than the last day of a calendar month, the period that terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month. If, in the month of February, there is no date corresponding to the date prescribed for filing the report or paying, the period from such date in January through the last day of February shall constitute a month. Thus, if a report is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(3) If a report is not timely filed or a contribution is not timely paid, the fact that the date prescribed for filing the report or paying the contribution, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or a legal holiday is immaterial in determining the number of months.

(d) *Reference to forms.* Any reference in this part to any prescribed reporting or other form of the Board includes a reference to any other form of the Board prescribed in substitution for such prescribed form.

(e) *Showing reasonable cause.* For purposes of this part if an employer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay any amount due under this part within the prescribed time will be considered to be due to reasonable cause to the extent that the employer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment but nevertheless was unable to pay on time.

Subpart B—Reporting and Collecting Contributions

§ 345.110 Reports of compensation of employees.

The provisions of part 209 of this chapter shall be applicable to the reporting of compensation under the Railroad Unemployment Insurance Act to the same extent and in the same manner as they are applicable to the reporting of compensation under the Railroad Retirement Act.

§ 345.111 Contribution reports.

(a) *General.* (1) Except as provided in paragraph (a)(2) of this section, every employer shall, for each calendar quarter of each year, prepare a contribution report, in duplicate, on Form DC–1.

(2) Contribution reports of employers who are required by State law to pay compensation on a weekly basis shall include with respect to such compensation all payroll weeks in which all or the major part of the compensation falls within the period for which the reports are required.

(b) *Compensation to be reported on Form DC–1.* Employers shall enter on the employer's quarterly contribution report, prior to any additions or subtractions, the amount of creditable compensation appearing on payrolls or other disbursement documents for the corresponding quarter as the amount of creditable compensation from which the contribution payable for that quarter is to be computed.

(Approved by the Office of Management and Budget under control number 3220–0012)

§ 345.112 Final contribution reports.

Upon termination of employer status, as determined under part 301 of this chapter, the last contribution report of the employer shall be so indicated by checking the box on the Form DC–1 entitled ''Final Report''. Such contribution report shall be filed with the Board on or before the sixtieth day after the final date for which there is payable compensation with respect to which contribution is required. The period covered by each such contribution report shall be plainly written thereon, indicating the final date for which compensation is payable. There shall be executed as part of each such final contribution report a statement giving the address at which compensation records will be kept and the name of the person keeping the records.

(Approved by the Office of Management and Budget under control number 3220–0012)

§ 345.113 Execution of contribution reports.

Each contribution report on Form DC–1 shall be signed by:

(a) The individual, if the employer is an individual;

(b) The president, vice president, or other duly authorized officer, if the employer is a corporation; or

(c) A responsible and duly authorized member or officer having knowledge of its affairs if the employer is a partnership or other unincorporated organization.

§ 345.114 Prescribed forms for contribution reports.

Each employer's contribution report, together with any prescribed copies and supporting data, shall be filled out in accordance with the instructions and regulations applicable thereto. The prescribed forms may be obtained from the Board. An employer will not be excused from making a contribution report for the reason that no form has been furnished to such employer. Application should be made to the Board for the prescribed forms in ample time to have the contribution report prepared, verified, and filed with the Board on or before the due date. Contribution reports that have not been so prepared will not be accepted and shall not be considered filed for purposes of § 345.115 of this part. In case the prescribed form has not been obtained, a statement made by the employer disclosing the period covered and the amount of compensation with respect to which the contribution is required may be accepted as a tentative contribution report if accompanied by the amount of contribution due. If filed within the prescribed time, the statements so made will relieve the employer from liability for any penalty imposed under this part for the delinquent filing of the contribution report *provided* that the failure to file a contribution report on the prescribed form was due to reasonable cause and not due to willful neglect, *and provided further,* that within 30 days after receipt of the tentative report such tentative report is supplemented by a contribution report made on the proper form.

(Approved by the Office of Management and Budget under control number 3220–0012)

§ 345.115 Place and time for filing contribution reports.

Each employer shall file its contribution report with the Chief Financial Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611. The employer's contribution report for each quarterly period shall be filed on or before the last day of the calendar month following the period for which it is made. If such last day falls on Saturday, Sunday, or a national legal holiday, the report may be filed on the next following business day. If mailed, reports must be postmarked on or before the date on which the report is required to be filed.

§ 345.116 Payment of contributions.

(a) The contribution required to be reported on an employer's contribution report is due and payable to the Board without assessment or notice, at the time fixed for filing the contribution report as provided for in § 345.115 of this part.

(b) An employer shall deposit the contributions required under this part in accord with instructions issued by the Railroad Retirement Board. At the direction of the Board, the Secretary of the Treasury shall credit such contributions to the Railroad Unemployment Insurance Account in accord with section 10 of the Railroad Unemployment Insurance Act and to the Railroad Unemployment Insurance Administration Fund in accord with section 11 of the Railroad Unemployment Insurance Act.

§ 345.117 When fractional part of cent may be disregarded.

In the payment of employers' contributions to the Board a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

§ 345.118 Adjustments.

(a) *In general.* If more or less than the correct amount of an employer's contribution is paid with respect to any compensation, proper adjustments with respect to the contributions shall be made, without interest, in subsequent contribution payments by the same employer, as provided for in this section.

(b) *Compensation adjustment.* A compensation adjustment is the amount of any adjustment reported by an employer on Form BA–4. See part 209 of this chapter.

(c) *Adjustment of contributions.* (1) All adjustments of contributions based on compensation adjustments shall be accounted for by the employer on the contribution report for the same quarter in which the Form BA–4 reflecting the compensation adjustments is filed with the Board.

(2) If less than the correct amount of contributions is paid for any previous calendar quarter or calendar year because of an error that does not

constitute a compensation adjustment as defined in paragraph (b) of this section, the employer shall adjust the error by—

(i) Reporting the additional contribution on the next report filed after discovery of the error; and

(ii) Paying the amount thereof to the Board at the time such report is filed.

(3) If more than the correct amount of contributions is paid for any previous calendar quarter or calendar year because of an error that does not constitute a compensation adjustment as defined in paragraph (b) of this section, the employer shall adjust the error by applying the excess payment as a credit against the contribution due on the next report filed after discovery of the error. However, if the overpayment cannot be adjusted because the employer is no longer required to file a report or because the overpayment to be adjusted exceeds the amount of contribution due on the employer's next report, the employer may file for a refund of the amount which cannot be adjusted as provided for in this section. If the overpayment is the result of an incorrect contribution rate as determined by the Board, the employer may file for a refund of the amount of overpayment or may take an adjustment as provided for in this section.

(d) *Limitations on adjustments.* No overpayment shall be adjusted under this section after the expiration of three years from the time the contribution report was required to be filed, or two years from the time the contribution was paid, whichever of such periods expires the later, or if no contribution report was filed, two years from the time the contribution was paid. Any underpayment not adjusted within the time limits as set forth in paragraph (c) of this section shall be adjusted on the employer's next contribution report or reported immediately on a supplemental return. Interest shall accrue on such underpayment as provided for in § 345.122 of this part from the time the adjustment should have been made under paragraph (c) of this section to date of payment. However, no underpayment shall be adjusted under this section after the receipt from the Board of formal notice and demand.

§ 345.119 Refunds.

(a) *In general.* If more than the correct amount of the employer's contribution is paid with respect to any compensation and the overpayment may not be adjusted in accordance with § 345.118 of this part, the amount of the overpayment shall be refunded in accordance with this section.

(b) *When permitted.* A claim for refund may be made only when the overpayment cannot be adjusted in accordance with the procedure set forth in § 345.118.

(c) *Form of claim.* A claim for refund shall be directed to the Chief Financial Officer and shall set forth all grounds in detail and all facts alleged in support of the claim, including the amount and date of each payment to the Board of the contribution to the Board, and the period covered by the contribution report on which such contribution was reported.

(d) *Claim by fiduciary.* If an executor, administrator, guardian, trustee, or receiver files a claim for refund, evidence to establish the legal authority of the fiduciary shall be annexed to the claim filed by such fiduciary under this section.

(e) *Time limit.* No refund shall be allowed after the expiration of three years from the time the contribution report was required to be filed or two years from the time the contribution was paid, whichever of such periods expires the later, or if no contribution report was filed, two years from the time the contribution was paid.

(f) *Interest.* Interest shall be payable on any contribution refunded at the overpayment rate provided for in section 6621 of the Internal Revenue Code of 1986 from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days.

(g) *Refunds reduced by underpayments.* Any overpayment claimed or a refund under this section shall be reduced by the amount of any amount of any contributions previously assessed under § 345.120 of this part, which has not already been collected.

§ 345.120 Assessment and collection of contributions or underpayments of contributions.

(a) If any employer's contribution is not paid to the Board when due or is not paid in full when due, the Board may, as the circumstances warrant, assess the contribution or the deficiency and any interest or penalty applicable under this part (whether or not the deficiency is adjustable as an underpayment under § 345.118 of this part).

(b) The amount of any such assessment will be collected in accordance with the applicable provisions of law. If any employer liable to pay any contribution neglects or refuses to pay the same within ten days after notice and demand, the Board may collect such contribution with such interest and other additional amounts as are required by law, by levy, by administrative offset as authorized by 31 U.S.C. 3716 and in accordance with the procedures set forth in part 367 of this chapter, or by a proceeding in court, but only if the levy is made or proceeding begun:

(1) Within 10 years after assessment of the contribution; or

(2) Prior to the expiration of any period, including extension thereof, for collection agreed upon by the Chief Financial Officer and the employer.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by the provisions of the Railroad Retirement Tax Act and the regulations thereunder, insofar as not inconsistent with the provisions in this part, shall be applicable with respect to the assessment and collection of contributions under this part.

§ 345.121 Jeopardy assessment.

(a) Whenever in the opinion of the Board it becomes necessary to protect the interests of the Government by effecting an immediate reporting and collection of an employer's contribution, the Board will assess the contribution whether or not the time otherwise prescribed by law for filing the contribution report and paying such contribution has expired, together with all penalties and interest thereon. Upon assessment, such contribution, and any penalty, and interest provided for under this part shall be immediately due and payable, and the Board shall thereupon issue immediately a notice and demand for payment of the contribution, penalty, and interest.

(b) The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the Board a bond in an amount equal to the amount with respect to which the stay is desired, and with such sureties as the Board may deem necessary. Such bond shall be conditioned upon the payment of the amount (together with interest and any penalties thereon) the collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the employer may deposit with the Board bonds or notes of the United States, or bonds or notes fully guaranteed by the United States as to principal and interest, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the Board in case of default to collect or sell such bonds or notes so deposited.

§ 345.122 Interest.

(a) *Rate.* If the employer's contribution is not paid to the Board

when due and is not adjusted under § 345.118 of this part, interest accrues at the rate of 1 percent per month, or fraction of a month. Interest on past due contributions from the due date thereof until the date paid will be assessed after payment of the contributions, and notice and demand made upon the employer for payment thereof, in any case in which payment of the contribution is made before assessment under § 345.120.

(b) *Waiver of interest.* The Chief Financial Officer may waive, in whole or in part, any interest imposed by paragraph (a) of this section if in his or her judgment—

(1) There was a reasonable cause and not willful neglect for the late filing, late payment or underpayment, such as: the serious illness or death of an individual with the sole authority to execute the return and payment; fire, casualty, or natural disaster at the place where the railroad unemployment insurance records are kept; or reasons outside the employer's control, such as, the failure of the employer's bank to comply with the employer's filing and payment instructions;

(2) The amount of interest attributed to the delinquency is totally disproportionate to the period of the delay and the amount of contributions paid; and

(3) The employer's past record for timely compliance with railroad unemployment insurance reporting and payment requirements warrants such action considering such factors as the number and extent of delays associated with late reports, payments, and underpayments.

§ 345.123 Penalty for delinquent or false contribution reports.

(a) *Delinquent reports.* Unless waived under paragraph (b) of this section, the failure to file a contribution report on or before the due date shall cause a penalty to accrue of five percent of the amount of such contribution if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(b) *Waiver of penalty.* The Chief Financial Officer may waive all or a portion of the penalty imposed under paragraph (a) of this section consistent with the criteria applicable to waiver of interest as provided for in § 345.122(b) of this part.

(c) *Penalty on net amount.* For the purpose of paragraph (a) of this section the amount of contribution required to be shown on Form DC–1 shall be reduced by the amount of any part of the contribution that is paid on or before the date prescribed for the payment of the contribution and by the amount of any credit against the contribution that may be claimed upon the DC–1.

(d) *False reports.* If a fraudulent contribution report is made, a penalty equal to 50 percent of the amount of any underpayment shall be imposed on the employer.

§ 345.124 Right to appeal.

(a) Except as otherwise provided, an employer may seek administrative review of any determination with respect to any contribution, interest, or penalty made under this part by filing a request for reconsideration with the Chief Financial Officer within 30 days after the mailing of notice of such determination. An employer shall have a right to appeal to the Board from any reconsideration decision under this section by filing notice of appeal to the Secretary to the Board within 14 days after the mailing of the decision on reconsideration. Upon receipt of a notice of an appeal the Board may designate one of its officers or employees to receive evidence and report to the Board under the procedures set forth in part 319 of this chapter.

(b) *Request for reconsideration.* Any appeal filed under this part shall not relieve the employer from filing any reports or paying any contribution required under this part nor stay the collection thereof. Upon the request of an employer, the Board may relieve the employer of any obligation required under this part pending an appeal. Unless specifically provided by the Board, such relief shall not stay the accrual of interest on any disputed amount as provided for in § 345.122 of this part.

§ 345.125 Records.

Every employer subject to the payment of contributions for any calendar quarter shall, with respect to each such quarter, keep such permanent records as are necessary to establish the total amount of compensation payable to its employees, for a period of at least five calendar years after the date the contribution report to which the compensation relates was required to be filed, or the date the contribution is paid, whichever is later. The record should be in such form as to contain the information required to be shown on the quarterly contribution report. All records required by the regulations in this part shall be kept at a safe and convenient location accessible to inspection by the Board or any of its officers or employees, or by the Inspector General of the Railroad Retirement Board. Such records shall be at all times open for inspection by such officers or employees.

(Approved by the Office of Management and Budget under control number 3220–0012)

§ 345.126 Liens.

If any employer, after demand, neglects or refuses to pay a contribution required under this part, the amount of such contribution (including any interest, penalties, additional amount, or additions to such contribution, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such employer.

Subpart C—Individual Employer Records

§ 345.201 Individual employer record defined.

Effective January 1, 1990, the Board will establish and maintain a record, hereinafter known as an Individual Employer Record, for each employer subject to this part. As used in this subpart, ''Individual Employer Record'' means a record of each employer's benefit ratio; reserve ratio; 1-year compensation base; 3-year compensation base; unallocated charge; reserve balance; net cumulative contribution balance; and cumulative benefit balance. See § 345.302 of this part for a definition of these terms. Whenever a new employer begins paying compensation with respect to which contributions are payable under this part, the Board will establish and maintain an individual employer record for such employer.

§ 345.202 Consolidated employer records.

(a) *Establishing a consolidated employer record.* Two or more employers that are under common ownership or control may request the Board to consolidate their individual employer records into a joint individual employer record. Such joint individual employer record shall be treated as though it were a single employer record. A request for such consolidation shall be made to the Director of Unemployment and Sickness Insurance, and such consolidation shall be effective commencing with the calendar year following the year of the request.

(b) *Discontinuance of a consolidated employer record.* Two or more employers that have established and maintained a consolidated employer record will be permitted to discontinue such consolidated record only if the

individual employers agree to an allocation of the consolidated employer record and such allocation is approved by the Director of Unemployment and Sickness Insurance.

§ 345.203 Merger or combination of employers.

In the event of a merger or combination of two or more employers, or an employer and non-employer, the individual employer record of the employer surviving the merger (or any person that becomes an employer as the result of the merger or combination) shall consist of the combination of the individual employer records of the entities participating in the merger.

§ 345.204 Sale or transfer of assets.

(a) In the event property of an employer is sold or transferred to another employer (or to a person that becomes an employer as the result of the sale or transfer) or is partitioned among two or more employers or persons, the individual employer record of such employer shall be prorated among the employer or employers that receive the property (including any person that becomes an employer by reason of such transaction or partition), in accordance with any agreement among the respective parties (including an agreement that there shall be no proration of the employer record). Such agreement shall be subject to the approval of the Board.

(b) There shall be no transfer of the employer record where an employer abandons a line of track in accordance with the provisions of the Interstate Commerce Act and the applicable regulations thereunder, and a new entity, found by the Board to be an ''employer'' under part 301 of this chapter, is formed to operate or continue service over such line; the Board will assign to such entity a new-employer contribution rate in accordance with section 8(a)(1)(D) of the RUIA and § 345.304 of this part.

§ 345.205 Reincorporation.

The cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification will attach to the reincorporated or altered identity.

§ 345.206 Abandonment.

If an employer abandons property or discontinues service but continues to operate as an employer, the employer's individual employer record shall continue to be calculated as provided in this subpart without retroactive adjustment.

§ 345.207 Defunct employer.

If the Board determines that an employer has permanently ceased to pay compensation with respect to which contributions are payable under this part, the Board will, on the date of such determination, transfer the employer's net cumulative contribution balance as a subtraction from, and the cumulative benefit balance as an addition to, the system unallocated charge balance and will cancel all other accumulations of the employer. The Board's determination that an employer is defunct will be based on evidence indicating that the employer has ceased all operations as an employer and has terminated its status as an employer. In making its determination, the Board will consider evidence as described in part 202 of this chapter with respect to termination of employer status under the Railroad Retirement Act. Mere failure of an employer to pay contributions due under this part does not indicate that such employer is defunct.

§ 345.208 System records.

Effective January 1, 1990, the Board will establish and maintain records necessary to determine pooled charges, pooled credits, and unallocated charges for the experience rating system and will publish a notice with respect thereto no later than October 15 of each year. See § 345.302 of this part for the definition of these terms.

Subpart D—Contribution Rates

§ 345.301 Introduction.

(a) *General.* Effective January 1, 1993, each employer that is subject to this part will have an experience-rated rate of contribution computed as set forth in § 345.303 of this part. A transitional rate of contribution applies to each such employer for 1991 and 1992, in accordance with section 8(a)(1)(B) of the RUIA. An employer that first becomes subject to section 8 of the RUIA after December 31, 1989 will have a ''new-employer'' contribution rate as computed in § 345.304 of this part. An employer's experience-rated contribution rate will be not less than 0.65 percent nor more than 12.5 percent. Not later than October 15 of each year, the Board will notify each employer of its experience-rated contribution rate for the following calendar year.

(b) *Components of an experience-rated contribution rate.* An employer's experience-rated contribution rate for each calendar year beginning with 1993 will be based upon the following charges:

(1) An allocated charge based upon the amount of benefits paid to employees of such employer; this charge is explained in subpart E of this part;

(2) An unallocated charge based upon a proportionate share of the system unallocated charge balance, the computation of which is explained in § 345.302(p) of this part;

(3) A pooled charge, also referred to as risk-sharing, to cover the cost of benefit payments that are chargeable to a base year employer but are not captured by the contribution rate assigned to such employer because it is paying contributions at the maximum rate of contribution; the formula for computing the pooled charge is set forth in § 345.302(j) of this part;

(4) A surcharge of 1.5, 2.5, or 3.5 percent, or a pooled credit, depending on the balance to the credit of the Account as of June 30 of a given year; and

(5) An addition of 0.65 percent to the rate of contribution to cover the expenses incurred by the Board in administering the RUIA.

(c) *Maximum rate of contribution.* Notwithstanding any provision of this part, an employer's contribution rate for any calendar year shall be limited to 12 percent, except when a surcharge of 3.5 percent is in effect with respect to that calendar year. If a 3.5 percent surcharge is in effect, the maximum contribution limit with respect to that calendar year is 12.5 percent. The surcharge rate for a calendar year will be 3.5 percent when the balance to the credit of the Account is less than zero. The Board will compute the surcharge rate in accordance with § 345.302(n) of this part.

§ 345.302 Definition of terms and phrases used in experience-rating.

(a) *Account.* The Railroad Unemployment Insurance Account established by section 10 of the Railroad Unemployment Insurance Act (RUIA) and maintained by the Secretary of the Treasury in the unemployment trust fund established pursuant to section 904 of the Social Security Act. Benefits paid under the RUIA for an employee's days of unemployment or days of sickness are paid from this Account.

(b) *Benefit ratio.* This ratio is computed for each employer as of any given June 30 by dividing all benefits charged to the employer under subpart E of this part during the 12 calendar quarters ending on such June 30 by the employer's three-year compensation base as of such June 30, as computed under paragraph (q) of this section. The

ratio is computed to four decimal places.

(c) *Benefits.* Benefits are money payments paid or payable by the Board to a qualified employee with respect to his or her days of unemployment or days of sickness, as provided by the RUIA.

(d) *Compensation.* This term has the meaning given in part 302 of this chapter.

(e) *Contributions.* Contributions are the money payments paid or payable by an employer subject to this part with respect to the compensation paid or payable to employees of such employer.

(f) *Cumulative benefit balance.* An employer's cumulative benefit balance as of any given June 30 is determined by adding:

(1) The net amount of the benefits charged to the employer under subpart E on or after January 1, 1990, and

(2) The cumulative amount of the employer's unallocated charges on and after January 1, 1990, as computed under paragraph (r) of this section.

(g) *Fund.* The Railroad Unemployment Insurance Administration Fund established by section 11 of the RUIA and maintained by the Secretary of the Treasury in the unemployment trust fund established pursuant to section 904 of the Social Security Act. The costs incurred by the Board in administering the RUIA are paid from the Fund.

(h) *Net cumulative contribution balance.* The Board will determine an employer's net cumulative contribution balance as of any given June 30, as follows:

(1) *Step 1.* Compute the sum of all contributions paid by the employer pursuant to this part after December 31, 1989; add that portion of the tax, if any, imposed under 26 U.S.C. 3321(a) that is attributable to the surtax rate under section 7106(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100–647) and any repayment taxes paid by the employer pursuant to 26 U.S.C. 3321(a) after the outstanding balance of loans made under section 10(d) of the RUIA before October 1, 1985, plus interest, has been paid;

(2) *Step 2.* Subtract an amount equal to the amount of such contributions deposited, pursuant to section 8(i) of the RUIA, to the credit of the Fund; and

(3) *Step 3.* Add an amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under paragraph (k) of this section.

(i) *One-year compensation base.* An employer's one-year compensation base is the aggregate amount of compensation with respect to which the employer is liable for contributions under this part in the four calendar quarters ending on such June 30.

(j) *Pooled charge ratio.* The pooled charge ratio, when applicable, is a pro-rata increase in the rate of contribution assigned to each employer that is not already paying contributions at the maximum rate. A pooled charge will become applicable to each such employer during a calendar year when the Account loses income because one or more other employers are paying contributions at the maximum rate (12 or 12.5 percent) rather than at the higher experience-based rate that their benefit charges would otherwise require. The pooled charge ratio thus picks up the cost of benefits paid to employees of employers whose rate of contribution is capped at the maximum rate. The pooled charge ratio for a calendar year is the same for all employers whose rate is less than the maximum and is computed as follows:

(1) *Step 1.* For each employer paying contributions at the maximum contribution limit under § 345.301(c) of this part, compute the amount of contributions that such employer would have paid if its experience-based rate were applied to its one-year compensation base as of the preceding June 30 and by then deducting from such amount the amount derived by applying the maximum contribution rate to the same one-year compensation base. For the purposes of this computation, the experience-based rate is the rate computed for such employer under § 345.303 of this part.

(2) *Step 2.* After the amount is computed for each employer in accordance with Step 1 of this paragraph (j), add the amounts for all such employers. The aggregate amount so computed represents the amount of contributions not collected by the Account because of the maximum contribution limit.

(3) *Step 3.* For each employer whose experience-based rate of contribution, as computed at Step 3 of § 345.303(a) of this part, is less than zero, the percentage rate by which the employer's rate was raised in order to bring that rate to the minimum rate of zero is multiplied by the employer's 1-year compensation base. The total of the amounts so computed is subtracted from the aggregate amount computed in Step 2 of this paragraph (j).

(4) *Step 4.* Divide the net aggregate amount computed at Step 3 of this paragraph (j) by the system compensation base as of the preceding June 30, excluding from such base the one-year compensation base of each employer whose experience-based contribution rate, computed at Step 6 of § 345.303(a) of this part, exceeds the maximum contribution limit. The result is the pooled charge ratio for the current calendar year. This ratio is computed to four decimal places.

(k) *Pooled credit ratio.* Effective January 1, 1991, and on the first of each subsequent calendar year, the Board will reduce each employer's rate of contribution, as computed under § 345.303 of this part, by the amount of the pooled credit ratio, if any, applicable to such calendar year. This ratio is computed by reference to the accrual balance to the credit of the Account as of the preceding June 30. The Board will determine the amount of the pooled credit ratio, as follows:

(1) *Step 1.* First, the Board computes the accrual balance to the credit of the Account as of the close of business on the preceding June 30 in the same manner as under Step 1 of paragraph (n) of this section. There will be a pooled credit ratio for the calendar year if that balance is in excess of the greater of $250 million or of the amount that bears the same ratio to $250 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (o) of this section.

(2) *Step 2.* If there is such an excess amount, divide that excess amount by the system compensation base as of the June 30 preceding the calendar year. The result is the pooled credit ratio applicable to each employer for the calendar year involved in the computation. This ratio is computed to four decimal places.

(l) *Reserve balance.* An employer's reserve balance is computed as of any given June 30 by subtracting its cumulative benefit balance as of such June 30 from its net cumulative contribution balance as of such June 30. An employer's net cumulative benefit balance is computed under paragraph (f) of this section and its net cumulative contribution balance under paragraph (h) of this section. An employer's reserve balance may be either positive or negative, depending upon whether its net cumulative contribution balance exceeds its cumulative benefit balance.

(m) *Reserve ratio.* This ratio is computed for each employer as of any given June 30 by dividing its reserve balance as of June 30 by its one-year compensation base as of such June 30. An employer's reserve balance is computed under paragraph (l) of this section and its one-year compensation base under paragraph (i) of this section.

This ratio is computed to four decimal places; it may be either a positive or negative figure, depending on whether the employer's reserve balance is a positive or negative figure.

(n) *Surcharge rate.* Effective January 1, 1991, and on the first of each subsequent calendar year, the Board will add to each employer's rate of contribution, as computed under § 345.303 of this part, a surcharge rate of 1.5, 2.5, or 3.5 percent if the accrual balance to the credit of the Account, as of the preceding June 30, falls within the range of balances set forth in Steps 1 and 2 of this paragraph (n). The Board will determine which surcharge rate, if any, is in effect for a calendar year by means of the following computation:

(1) *Step 1.* First, the Board computes the accrual balance to the credit of the Account as of the close of business on the preceding June 30. Such balance will include any amounts in the Account attributable to loans made under section 10(d) of the Act before October 1, 1985, but not the obligation of the Account to repay such loans with interest. For this purpose, the Account will be deemed to include any balance to the credit of the Fund that exceeds $6 million. The surcharge rate, as specified in Step 2 of this paragraph (n), will apply if that balance is less than the greater of $100 million or of the amount that bears the same ratio to $100 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (o) of this section.

(2) *Step 2.* If the balance to the credit of the Account is less than the greater of the amounts referred to in the last sentence of Step 1 of this paragraph (n), but is equal to or more than the greater of $50 million or of the amount that bears the same ratio to $50 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, then the surcharge rate for the calendar year shall be 1.5 percent. If the balance to the credit of the Account is less than the greater of the amounts referred to in this Step 2, but greater than or equal to zero, then the surcharge rate for the calendar year shall be 2.5 percent. If the balance to the credit of the Account is less than zero, the surcharge rate for the calendar year shall be 3.5 percent.

(o) *System compensation base.* The system compensation base as of June 30 of each year is the total of the amounts of the one-year compensation bases of all base year employers, computed in accordance with paragraph (i) of this section. Not later than October 15 of each year, the Board will compute the amount of the system compensation base and will publish notice of such amount in the Federal Register as soon as practicable thereafter.

(p) *System unallocated charge balance.* This balance, as computed initially for the period January 1 through June 30, 1990 and updated as of June 30 of each subsequent calendar year, represents the net amount of expenditures from, and income to, the Account that cannot be allocated as benefit charges, or adjustments, to the cumulative benefit balances of individual base year employers. The Board computes this balance, as of June 30 of each year, as follows:

(1) *Step 1.* Compute the aggregate amount of all interest paid by the Account on loans from the Railroad Retirement Account after September 30, 1985, pursuant to section 10(d) of the RUIA, during the 12-month period ending on June 30;

(2) *Step 2.* Add the amount of unemployment benefits paid by reason of strikes or work stoppages growing out of labor disputes and the cumulative benefit balance of any defunct employer;

(3) *Step 3.* Add the aggregate amount of any other benefit payment that is not chargeable to a base year employer pursuant to subpart E of this part and any other expenditure not chargeable to the Fund;

(4) *Step 4.* Subtract the aggregate amount of income to the Account received as a proportionate part of the earnings of the unemployment trust fund, computed in accordance with section 904(e) of the Social Security Act, and all income to the Account received as fines or penalties collected under the RUIA;

(5) *Step 5.* Subtract the aggregate amount of all transfers from the Fund to the Account pursuant to section 11(d) of the RUIA;

(6) *Step 6.* Subtract the aggregate amount of any other cash receipt to the Account that cannot be treated as an adjustment to the benefit charges of a base year employer;

(7) *Step 7.* Subtract the net cumulative contribution balance of any defunct employer, calculated as of the date on which the Board determines that such employer is defunct. After the Board has computed the amount of the system unallocated charge balance as of June 30 of each year, the Board will publish notice of such amount in the Federal Register on or before October 15 of such year.

(q) *Three-year compensation base.* An employer's three-year compensation base as of any given June 30 is the aggregate amount of compensation with respect to which the employer is liable for contributions under this part in the 12 calendar quarters ending on such June 30.

(r) *Unallocated charge.* An employer's unallocated charge as of any given June 30 is the amount that, as of such June 30, bears the same ratio to the system unallocated charge balance as the employer's 1-year compensation base bears to the system compensation base. The system unallocated charge balance is computed under paragraph (p) of this section and the system compensation base under paragraph (o) of this section.

§ 345.303 Computation of rate.

(a) With respect to compensation in a calendar year that begins after December 31, 1992, the Board will compute, by October 15, 1992, and by October 15 of each subsequent year, a contribution rate for each employer (other than a new employer) in accordance with the following 8-step process:

(1) *Step 1.* Compute the employer's *benefit ratio* as of the preceding June 30;

(2) *Step 2.* Compute the employer's *reserve ratio* as of the preceding June 30 and subtract it from the *benefit ratio;*

(3) *Step 3.* Subtract the *pooled credit ratio* (if any) for the calendar year;

(4) *Step 4.* Multiply the Step 3 result by 100, in order to obtain a percentage rate, and then round such rate to the nearest 100th of one percent. If the rate so computed is zero or less than zero, the percentage rate will be deemed zero at this point;

(5) *Step 5.* Add 0.65 (the administrative charge) to the percentage rate computed through Step 4.

(6) *Step 6.* Add the *surcharge rate* (if any) for the calendar year;

(7) *Step 7.* Add the *pooled charge ratio* (if any) for the calendar year, as computed to four decimal places and multiplied by 100;

(8) *Step 8.* If the rate computed through Step 7 is greater than 12 percent (or 12.5 percent if a surcharge of 3.5 percent is in effect for the calendar year), reduce the percentage rate so computed to 12 percent or 12.5 percent, if appropriate.

(b) The percentage rate computed under paragraph (a) of this section is the employer's rate of contribution for the calendar year in question.

(c)(1) Any computation that is to be made under this section on the basis of a 12-quarter period ending on a given June 30 shall be made on the basis of a period beginning on January 1, 1990, or on the first day of the first calendar quarter that begins after the date on which the employer first began to pay compensation subject to this part, or on July 1 of the third calendar year

preceding that June 30, whichever date is later, and ending on that June 30.

(2) The amount computed under paragraph (c)(1) of this section shall be increased to an amount that bears the same ratio to the amount so computed as 12 bears to the number of calendar quarters on which the computation is based.

§ 345.304 New-employer contribution rates.

(a) An employer whose coverage under the RUIA becomes effective after December 31, 1989, is considered a ''new employer'' for the purposes of this part and will be assigned a contribution rate as computed under this section. The Board shall determine where an employer is a new employer and, if so, the effective date of its coverage under the RUIA and its rate of contribution with respect to compensation paid to employees on and after such effective date.

(b) *Initial contribution rate.* The rate of contribution with respect to compensation paid in calendar months before the end of the first full calendar year that the employer is subject to this section shall be the average contribution rate paid by all employers during the three calendar years preceding the calendar year before the calendar year in which the compensation is paid. The Board will compute the average contribution rate by dividing the aggregate contributions paid by all employers during those three calendar years by the aggregate compensation with respect to which such contributions were paid and by then multiplying the resulting ratio, as computed to four decimal points, by 100.

(c) *Second contribution rate.* The rate of contribution with respect to compensation paid in months in the second full calendar year shall be the smaller of the maximum contribution limit under the RUIA or the percentage rate computed as follows:

$$R = \frac{2(A2) + B}{3}$$

(d) *Third contribution rate.* The rate of contribution with respect to compensation paid in months in the third full calendar year shall be the smaller of the maximum contribution limit under the RUIA or the percentage rate computed as follows:

$$R = \frac{A3 + 2C}{3}$$

(e) *Subsequent calendar years.* The rate of contribution with respect to months after the third full calendar year shall be determined under § 345.303 of this part.

(f) *Meaning of symbols.* For the purpose of the formulas in paragraphs (c) and (d) of this section, ''R'' is the applicable contribution rate being computed; ''A2'' is the contribution rate that would have been determined under paragraph (b) of this section if the employer's second calendar year had been its first full calendar year; ''A3'' is the contribution rate that would have been determined under paragraph (b) of this section, if the employer's third calendar year had been such employer's first full calendar year; ''B'' is the contribution rate for the employer as determined under § 345.303 of this part for the employer's second full calendar year; and ''C'' is the contribution rate for the employer as determined under § 345.303 of this part for the employer's third full calendar year.

(g) *Special rule for certain computations.* For purposes of computing ''B'' and ''C'' in the formulas in this section, the percentage rate computed under § 345.303 shall not be reduced under Step 8 of that section; and any computations that, under § 345.303, are to be made on the basis of a 4-quarter or 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing with the first day of the first calendar quarter that begins after the date on which the employer first began paying compensation subject to this part and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as four or twelve, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

§ 345.305 Notification and proclamations.

(a) *Quarterly notifications to employers.* Not later than the last day of any calendar quarter that begins after March 31, 1990, the Board will notify each employer of its cumulative benefit balance and its net cumulative contribution balance as of the end of the preceding calendar quarter, as computed in accordance with § 345.302(f) and (h) of this part as of the last day of such preceding calendar quarter rather than as of a given June 30 if such last day is not a June 30.

(b) *Annual notifications to employers.* Not later than October 15, 1990, and October 15 of each year thereafter, the Board will notify each employer of its benefit ratio, reserve ratio, one-year compensation base, three-year compensation base, unallocated charge, and reserve balance as of the preceding June 30, as computed in accordance with this part, and of the contribution rate applicable to the employer for the following calendar year as computed under the applicable section of this part.

(c) *Proclamations.* Not later than October 15, 1990, and October 15 of each year thereafter, the Board shall proclaim—

(1) The balance to the credit of the Account as of the preceding June 30 for purposes of computing the pooled credit ratio and the surcharge rate of contribution;

(2) The balance of any advances to the Account under section 10(d) of the RUIA after September 30, 1985, that has not been repaid with interest as provided in such section as of September 30 of that year;

(3) The system compensation base as of that June 30;

(4) The system unallocated charge balance as of that June 30; and

(5) The pooled credit ratio, the pooled charge ratio, and the surcharge rate of contribution, if any, applicable in the following calendar year.

(d) *Publication and notice.* As soon as practical after the Board has determined and proclaimed the amounts specified in paragraph (c) of this section, the Board will publish notice of such amounts in the Federal Register. The notifications to employers under paragraphs (a) and (b) of this section will be sent to the employer official designated to receive them.

§ 345.306 Availability of information.

Upon request of an employer subject to this part, the Board will make available to such employer any information that is necessary to verify the accuracy of its rate of contribution, as determined by the Board, including information necessary to verify the accuracy of the data maintained by the Board in the employer's individual employer record.

§ 345.307 Rate protest.

(a) *Request for reconsideration.* An employer may appeal a determination of a contribution rate computed under this part by filing a request for reconsideration with the Director of Unemployment and Sickness Insurance within 90 days after the date on which the Board notified the employer of its rate of contribution for the next ensuing calendar year. Within 45 days of the receipt of a request for reconsideration the Director shall issue a decision on the protest.

(b) *Appeal to the Board.* An employer aggrieved by the decision of the Director of Unemployment and Sickness Insurance under paragraph (a) of this section may appeal to the Board. Such

appeal shall be filed with the Secretary to the Board within 30 days after the date on which the Director notified the employer of the decision on reconsideration. The Board may decide such appeal without a hearing or, in its discretion, may refer the matter to a hearings officer pursuant to part 319 of this chapter.

(c) *Decision of the Board final.* Subject to judicial review provided for in section 5(f) of the RUIA, the decision of the Board under paragraph (b) of this section is final with respect to all issues determined therein.

(d) *Waiver of time limits.* A request for reconsideration or appeal under this section shall be forfeited if the request or appeal is not filed within the time prescribed, unless reasonable cause, as defined in this part, for failure to file timely is shown.

(e) *Rate pending review.* Pending review of the protested rate, the employer shall continue to pay contributions at such rate. Any adjustment in the contributions paid at such rate as the result of an appeal shall be in accordance with § 345.118 of this part.

Subpart E—Benefit Charging

§ 345.401 General rule.

Effective January 1, 1990, all benefits paid to an employee for his or her days of unemployment or days of sickness will be charged to the base year employer of such employee, except as hereinafter provided in this part. The Board will make the charge by adding the gross amount of the benefits payable to an employee on the basis of a claim for benefits to that employee's base year employer's cumulative benefit balance. The benefit charge does not depend on whether the employee receiving the benefit payment is a current employee of the base year employer.

§ 345.402 Strikes or work stoppages.

If benefits are payable to an employee for days of unemployment resulting from a strike or work stoppage growing out of a labor dispute, the Board will charge the benefit payment to the system unallocated charge balance, not to the cumulative benefit balance of the employee's base year employer. For the purposes of this section, the phrase ''strike or work stoppage growing out of a labor dispute'' does not include an employee's protected refusal to work under section 212(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441(b)).

§ 345.403 Multiple base year employers.

(a) *General rules for benefit charging.* All benefits paid to an employee who had more than one base year employer shall be charged to the cumulative benefit balances of such employers, as follows:

(1) If the employer at the time of the claim is the same as the last employer in the base year, benefits will be charged in reverse chronological order, but the amount charged to each base year employer shall not exceed the amount of compensation paid by such employer to the employee in the base year;

(2) In all other cases, benefits will be charged in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employee by all such employers in the base year; benefit charging in accordance with this method shall apply whether the base year employment was with successive employers or with concurrent employers.

(b) *Excess benefit payments.* If, in applying the rule in paragraph (a)(1) of this section, there remain benefit payments, in whole or in part, that cannot be charged to any base year employer, the amount of benefits paid in excess of those chargeable under paragraph (a)(1) shall be charged to the system unallocated charge balance.

(c) *Board records as basis for charging multiple base year employers.* Where an employee has more than one base year employer, the Board will use records compiled on the basis of employer reports filed under § 345.110 of this part for the purpose of determining whether the employer at the time of the claim for benefits is the last employer in the base year and for other purposes related to benefit charging under this subpart. If, in a particular case, such records do not contain all the data necessary to determine the charge, the Board will request the necessary data from the base year employers who may be liable for the charge.

§ 345.404 Adjustments.

(a) *Recovery of benefits charged to base year employer.* Where the Board recovers a benefit payment that it had previously charged, in whole or in part, to one or more base year employers, the Board will subtract the amount of the recovery from the cumulative benefit balances of the employers of the employee to whom such amount was paid as a benefit in proportion to the amount by which each such employer's cumulative benefit balance was increased as a result of the payment of the benefit.

(b) *Recovery of other benefit payments.* Where the Board recovers a benefit payment that was not charged, in whole or in part, to any base year employer, or was made before January 1, 1990, the Board will treat the amount of the recovery as a subtraction from the system unallocated charge balance.

(c) *Payment of interest or other debt collection-related charges.* The Board will not adjust a base year employer's cumulative benefit balance to reflect payment by a debtor of interest or other charges assessed by the Board under § 200.7 of this chapter with respect to the collection of a debt arising from a benefit payment charged to such employer and later found to be recoverable by the Board.

(d) *Limitations.* The Board will adjust a base year employer's cumulative benefit balance only when the Board actually recovers, by cash payment or setoff, a debt that represents a benefit payment that was charged, in whole or in part, to such employer. No adjustment shall be made—

(1) If the Board waives recovery of a debt in accordance with part 340 of this chapter, or

(2) If the Board finds that a debt is uncollectible, or

(3) To the extent of the amount not recovered by the Board by reason of a compromise settlement of a debt.

§ 345.405 Notices to base year employers.

(a) *Prepayment notification.* When the Board receives an employee's claim for unemployment or sickness benefits, the Board will give the employee's base year employer notice of the claim and an opportunity to provide information to the Board with respect to the employee's eligibility for benefits for the period of time covered by the claim.

(b) *Notice of claim determination.* After the base year employer has had an opportunity to provide information in accordance with the prepayment notification process described in paragraph (a) of this section, the office of the Board that is adjudicating the employee's claim for benefits will determine whether to pay or to deny benefits on the claim. Such office will send notice to the base year employer showing what determination was made on the claim. If benefits are found to be payable, the amount of the payment will be charged to the cumulative benefit balance of the base year employer in accordance with the provisions of this subpart. If the base year employer disagrees with the payment of benefits, it may request reconsideration in accordance with part 320 of this chapter.

(c) *Quarterly notice of benefit charges.* As soon as practical following the end of each calendar quarter, the Board will send to each employer a report of its cumulative benefit balance computed as

of the end of such quarter. The computation of such balance will reflect the following:

(1) The total amount of unemployment and sickness benefit payments made after December 31, 1989, that have been charged to the employer as the base year employer of the employees who received the benefits; minus

(2) The total amount realized in recovery of such benefits; plus

(3) The total amount of the unallocated charges assigned to such base year employer after December 31, 1989; minus

(4) The total amount realized in recovery of such unallocated charges.

§ 345.406 Defunct employer.

Whenever the Board determines, pursuant to § 345.207 of this part, that an employer is defunct, the Board will add the amount of such employer's benefit charges, as shown in its cumulative benefit balance, to the system unallocated charge balance.

Dated: April 26, 1996.

By Authority of the Board.

For The Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–10983 Filed 5–2–96; 8:45 am]

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Federal Register

Friday
May 3, 1996

Part VI

Department of Transportation

Coast Guard

33 CFR Parts 154 and 155

Tank Vessel and Facility Response Plans, and Response Equipment for Hazardous Substances; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[CGD 94–032 and 94–048]

RIN 2115–AE87 and 2115–AE88

Tank Vessel and Facility Response Plans, and Response Equipment for Hazardous Substances

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is soliciting comments relating to proposed regulations requiring response plans for: certain tank vessels operating on the navigable waters of the United States or any marine transportation-related (MTR) facility that, because of its location, could reasonably be expected to cause substantial or significant and substantial harm to the environment by discharging a hazardous substance. These regulations are mandated by the Oil Pollution Act of 1990 (OPA 90), which requires the President to issue regulations requiring the preparation of hazardous substance response plans. The purpose of requiring response plans is to minimize the impact of a discharge or release of hazardous substances into the navigable waters of the United States.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council [G–LRA–2/3406] (CGD 94–032, 94–048), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LT Cliff Thomas, Standards Evaluation and Development Division (G–MES), (202) 267–1099.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the early stages of this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this specific advance notice (CGD 94–032, 94–048), and the specific section of the action being addressed or the issue to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. All comments will be considered in drafting the notice of proposed rulemaking.

The Coast Guard plans to hold a public meeting in Washington, DC regarding this proposed rulemaking between 45 to 60 days after publication of this advance notice of proposed rulemaking (ANPRM). This meeting will be conducted for the purpose of receiving views on what should be regulated and what appropriate regulations would be. The date and time will be announced by a later notice in the Federal Register. Persons may request additional public meetings by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If it determines that an additional opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public meeting at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are LT Cliff Thomas, Standards Evaluation Division, (G–MES), LCDR Walter (Bud) Hunt, Response Division, (G–MRO), and Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel.

Background and Purpose

1. General

Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. 1321(j)(5)], as amended by section 4202(a) of OPA 90, requires owners or operators of tank vessels, offshore facilities, and onshore facilities that could reasonably by expected to cause substantial harm to the environment to prepare and submit plans for responding, to the maximum extent practicable, to a worst case discharge, or a substantial threat of such a discharge, of oil or a hazardous substance. Section 4202(b)(4) of OPA 90 establishes an implementation schedule for these requirements with regard to oil. Under section 4202(b)(4), an owner or operator of a tank vessel or facility for which a response plan was required under 33 U.S.C. 1321(j)(5) and which handled, stored, or transported oil was required to be operating in compliance with an approved response plan by August 18, 1993. However, section 4202(b)(4) did not establish a compliance date requiring response plans for hazardous substances. For the purposes of this ANPRM, discharge and release are synonymous.

2. Oil Response Plan Regulations

The Coast Guard issued two separate interim final rules (IRS) on February 5, 1993: one requiring response plans for tank vessels carrying oil in bulk as cargo (VRP IFR) [33 CFR 155] and another requiring response plans for MTR facilities that handle, store, or transport oil in bulk (FRP IFR) [33 CFR 154]. These IFRs define many concepts such as ''marine transportation-related facility,'' ''maximum extent practicable,'' and ''worst case discharge.'' The rules also provide a specific format for response plans; however, they allow for deviations from this format as long as the required information is included and there is a cross reference sheet identifying its location. The Coast Guard is considering using these concepts or modifying them as necessary in the regulations for response plans for hazardous substances.

3. Tank Vessels

The VRP IFR for oil uses the definition of ''tank vessel'' in 46 U.S.C. 2101. The same definition applies for purposes of implementing the OPA 90 provisions for hazardous substance response plans. This definition applies the requirement for hazardous substance response plans to all tank vessels that carry hazardous substances in bulk as cargo. Offshore supply vessels (OSVs) and certain fishing and fish tender vessels are exempt from the requirements for hazardous substance response plans because, in accordance with section 5209(b) of the Coast Guard Authorization Act of 1992 [Pub L. 102–587, 106 Stat. 5039 at 5076], they are not considered tank vessels for the purposes of any law.

The VRP IFR for oil establishes three categories for tank vessels: manned vessels carrying oil as a primary cargo, unmanned tank barges carrying oil as a primary cargo, and vessels carrying oil as a secondary cargo. The Coast Guard is considering applying this scheme for categorizing tank vessels to regulations requiring hazardous substance response plans.

4. Marine Transportation Related Facilities

OPA 90 requires hazardous substance response plans for any offshore facility or any onshore facility that, because of its location, could reasonably be expected to cause substantial or significant and substantial harm to the environment by discharging a hazardous substance. In Executive Order (E.O.) 12777, the President divided the responsibility for implementing the provisions of OPA 90 regarding hazardous substance response plans among various Federal agencies. Through a series of delegations, the Coast Guard was granted the authority to implement hazardous substance response plan requirements for fixed and mobile onshore MTR facilities and for deepwater ports. The Environmental Protection Agency (EPA) was granted the authority to regulate fixed onshore non-transportation-related facilities. The Research and Special Programs Administration (RSPA) was granted the authority to regulate onshore non-marine transportation-related facilities (i.e., pipelines, motor carriers, and railways). The Department of Interior's Minerals Management Service (MMS) was granted the authority to regulate offshore facilities and associated pipelines, other than deepwater ports subject to the Deepwater Ports Act of 1974.

That segment of the MTR facility that is over water is considered to be an ''offshore facility'' under the FWPCA. Under E.O. 12777, this segment is under the purview of MMS. A memorandum of understanding (MOU) between the Department of Interior (DOI), Department of Transportation (DOT), and the EPA establishing Federal jurisdictional boundaries for offshore facilities became effective on February 3, 1994 [59 FR 9494; February 28, 1994]. To avoid any confusion caused by the definition of ''offshore facility'', MMS coordinated an effort to establish jurisdictional boundaries for oil spill prevention and control, response planning, and response equipment inspection activities. The Secretary of the Interior redelegated DOI's functions under section 2(i) of E.O. 12777 to give the EPA jurisdiction over non-transportation-related offshore facilities landward of the coast line and to give DOT jurisdiction over transportation-related offshore facilities located landward of the coast line. This MOU does not include jurisdictional boundaries for oil spill financial responsibility.

The FRP IFR for oil defines an MTR facility as any onshore facility, including piping and structures used for the transfer or oil to or from a vessel and any deepwater port subject to regulation under 33 CFR part 150. This definition includes not only large fixed onshore facilities but also tank trucks, marinas, and railroad tank cars that transfer oil to or from vessels where the vessel has a capacity of 250 barrels of oil or more. This definition, modified by substituting the phrase ''hazardous substance'' for the word ''oil'', could be applied to regulations requiring hazardous substance response plans.

As Coast Guard-regulated fixed onshore MTR facility is generally a segment of a larger facility or complex. The FRP IFR for oil describes a complex as a facility that contains portions which are regulated by two or more Federal agencies. Onshore non-transportation related fixed facilities, which can be part of a complex, are already covered by a web of existing statutes and regulations at the Federal, state, and local levels that address preparedness for, and response to, hazardous substance releases. One of the purposes of this ANPRM is to address any potential gaps in the coverage of these facilities and to prevent imposing duplicative, overlapping, or conflicting regulations.

OPA 90 makes the distinction between onshore facilities that could reasonably be expected to cause substantial harm to the environment (substantial harm facilities) and facilities that could reasonably be expected to cause significant and substantial harm to the environment (significant and substantial harm facilities). Response plans must be prepared and submitted for both types of MTR facilities; however, response plans for significant and substantial harm MTR facilities also must be reviewed and approved by the Coast Guard.

Under the FRP IFR for oil, all MTR facilities, including mobile facilities, that are capable of transferring oil in bulk to or from vessels with a capacity of 250 barrels or more, and MTR facilities that are specifically so designated by the Coast Guard Captain of the Port (COTP) are classified as substantial harm facilities. However, within this set of substantial harm facilities, there is a subset of significant and substantial harm facilities. Significant and substantial harm facilities are fixed onshore MTR facilities, capable of transferring oil in bulk to or from vessels with a capacity of 250 barrels or more, deepwater ports, or facilities that are specifically so designated by the COTP. Mobile MTR facilities are not considered to be significant and substantial harm facilities unless so designated by the COTP.

The terms substantial harm facility and significant and substantial harm facility, as defined in the FRP IFR for oil, could be used in the FRP response plan regulations for hazardous substances if the phrase ''hazardous substances'' were substituted for the word ''oil'' in the definitions of those terms.

The Coast Guard considered developing criteria for designation of facilities that handle, store, or transport hazardous substances as substantial harm and as significant and substantial harm facilities that would be different from those criteria used in the oil FRP IFR. The criteria considered would reflect the prospect that discharges of hazardous substances present a different type and degree of potential damage to human health and the environment than oil discharges.

EPA uses the concept of a ''reportable quantity'' to set the amount of a discharge of a hazardous substance which requires the releaser to report the discharge to the government. Section 117.1 of 40 CFR defines ''reportable quantity'' as that quantity that may be harmful and is a violation of section 311(b)(3) of the FWPCA [33 U.S.C. 1321(b)(3)] when discharged into or upon navigable waters, adjoining shorelines, the contiguous zone, or in conjunction with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331, *et seq.*] or Deepwater Ports Act of 1974 [33 U.S.C. 1501 through 1524]. Table 117.3 of 40 CFR lists the reportable quantities of substances designated as hazardous substances under section 311(b)(4) of the FWPCA [33 U.S.C. 1321(b)(4)].

One criterion considered was to designate an MTR facility that handles, stores, or transports a hazardous substance in an amount exceeding the reportable quantity of that hazardous substance as a substantial harm facility. A criterion considered in designating significant and substantial harm facilities was to identify facilities that handle, store, or transport hazardous substances above 10 times the reportable quantity. Alternately, facilities could be designated as significant and substantial harm facilities if they handle, store, or transport hazardous substances 100 times above the reportable quantity.

Using the concept of a reportable quantity to define what constitutes a substantial harm facility, and distinguishing it from a significant and substantial harm facility has the advantage of building a regulatory

structure with a concept that incorporates quantifiable values that already exist and are based on rational decisions through the rulemaking process. The added advantage is that the public, industry, and Coast Guard are familiar with these concepts. However, it may also result in selection criteria that are unnecessarily complicated and that are not consistent with those established in the FRP IFR for oil. Additionally, the reportable quantity concept may not be applicable to non-FWPCA hazardous chemicals. It is also not clear that using this criteria will appreciably increase the likelihood of predicting the harm that may occur to the environment in the event of a discharge of hazardous substances from the MTR portion of a complex facility.

The applicability criteria established in 33 CFR 154.1015 for the FRP oil regulations will be considered in drafting hazardous substances response planning regulations. These criteria build on two existing regulatory regimes which include pollution prevention regulations for oil and hazardous substances and response planning regulations for oil spills.

The applicability in 33 CFR 154.1015 is based on the ability of a facility to transfer to or from a vessel with a capacity of 250 barrels or more. The determination of substantial harm and significant and substantial harm is associated with the capacity of an MTR facility and its proximity to navigable waters, adjoining shorelines, or the exclusive economic zone (EEZ), as well as other factors such as a facility's proximity to public and commercial water supply intakes and to areas of economic importance and environmental sensitivity. Such determining factors are as relevant for hazardous substances as they were for oils.

Using the FRP applicability for oil for hazardous substances would provide that all MTR facilities that are capable of transferring to or from a vessel with a capacity of 250 barrels or more could reasonably be expected to experience a release of a hazardous substance, into or on the navigable waters, adjoining shorelines, or EEZ, which would result in substantial harm to the environment. All MTR facilities would be classified as substantial harm facilities. Fixed MTR facilities would be classified as significant and substantial harm facilities. As in the FRP IFR, the COTP would have the authority to upgrade an MTR facility classification to substantial harm or significant and substantial harm. An owner or operator of an MTR facility who does not agree with the initial classification would be provided with a process to request review of the MTR facility's classification by the COTP using the appeal process established in 33 CFR 154.1075.

5. Defining Hazardous Substances

OPA 90 does not define the term ''hazardous substance,'' but relies on the existing definition of hazardous substance in section 311(a) of the FWPCA [33 U.S.C. 1321(a)]. Section 311(a) defines ''hazardous substance'' as ''any substance designated pursuant to subsection (b)(2) [33 U.S.C. 1321(b)(2)] of this section.'' Under section 311(b)(2), the EPA Administrator is tasked with developing, issuing, and revising a list of hazardous substances which may affect natural resources or present imminent and substantial danger to public health or welfare, including but not limited to fish, shellfish, wildlife, shorelines, and beaches. The EPA Administrator has designated 296 chemicals as hazardous substances under the FWPCA. The list of hazardous substances is located at 40 CFR part 116.

Section 1321(j)(5) of title 33 of the U.S.C., as amended by section 4202(a) of OPA 90, requires the Coast Guard to issue response plan regulations for those hazardous substances designated under the FWPCA. The Coast Guard notes that a number of dangerous chemicals other than those designated as hazardous substances are carried in bulk as cargo in the marine environment.

The International Maritime Organization (IMO) has begun to address response plan requirements for hazardous chemicals. Its intention is to use the basic guidelines for vessels contained in Regulation 26 of Annex I of MARPOL as a model for such requirements. The approach proposed here is consistent with that under consideration by IMO.

6. Maximum Extent Practicable and Worst Case Discharge

OPA 90 requires vessels and facilities to prepare and submit plans for responding, ''to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge.'' For regulatory purposes, both maximum extent practicable and worst case discharge are defined in the VRP and FRP regulations for oil. These concepts could be applied to the requirements for response plans for hazardous substances.

For vessels, the worst case discharge is defined at 33 CFR 155.1020 as ''a discharge in adverse weather conditions of a vessel's entire oil cargo.'' For facilities, the worst case discharge is defined to mean ''in the case of an onshore facility and deepwater port, the largest foreseeable discharge [of oil] in adverse weather conditions * * *'' The FRP IFR provides at 33 CFR 154.1029 a formula for calculating the worst case discharge for each facility. By substituting the phrase ''hazardous substances,'' in lieu of ''oil'', the definitions of worst case discharge for vessels and facilities could be applied to the hazardous substance regulations.

For vessels and facilities, maximum extent practicable is ''the planned capability to respond to a worst case discharge in adverse weather.'' Maximum extent practicable is tied to a quantity of equipment and personnel needed to respond to a worst case discharge. It recognizes the limits on available current technology and private response capabilities and places a limit or cap on the worst case discharge volumes for which an owner or operator must plan to respond. However, this cap does not limit the amount of response resources which owners or operators may have to provide during an actual spill response.

For oil, planning to respond to the maximum extent practicable generally implies planning for the containment and recovery of spilled oil. However, the Coast Guard recognizes that the concept of containment and recovery does not apply to all hazardous substances. Some hazardous substances that are released in the water will not be recoverable. For the hazardous substance regulations, planning to respond to the maximum extent practicable will require planning to protect the public health and safety, facility and vessel personnel, responders, and the environment. This protection may require planning for actions other than containment and recovery of discharged hazardous substances. Through rulemaking, the Coast Guard would be able to determine what types of response strategies would be required to address releases of the various types of hazardous substances. The Computer-Aided Management of Emergency Operations (CAMEO) appears to be the most effective method for determining the appropriateness of a response to a hazardous substance release. CAMEO is a computer program used by many response organizations to properly prepare for and respond to a hazardous substance release. It was developed by the National Oceanic and Atmospheric Administration (NOAA), EPA, and the National Safety Council. It is kept current by frequent updates, is widely used, and is readily available.

7. Average Most Probable Discharge and Maximum Most Probable Discharge

Although OPA 90 requires the issuance of regulations that address only the worst case discharge from a vessel or a facility, the VRP and FRP IFRs for oil require owners or operators to plan also for the average most probable discharges and the maximum most probable discharges. These concepts were developed to address the majority of the spills that occur on vessels and at facilities—spills which are significantly lower in volume than the worst case discharge volume required to be addressed in response plans by OPA 90.

In the VRP IFR for oil, the average most probable discharge is defined as a discharge of 50 barrels of oil from the vessel during transfer operations. The maximum most probable discharge is a discharge of (1) 2,500 barrels of oil for vessels with an oil cargo capacity equal to or greater than 25,000 barrels; or (2) 10 percent of the vessel oil cargo capacity if less than 25,000 barrels.

If the FRP IFR for oil, the average most probable discharge is defined as a discharge of the lesser of 50 barrels or 1 percent of the volume of a worst case discharge. The maximum most probable discharge is the discharge of the lesser of 1,200 barrels or 10 percent of the volume of a worst case discharge.

The concepts for the average and maximum most probable discharge in the VRP and FRP IFRs for oil could be applied to the regulations requiring response plans for hazardous substances; however, the definitions of the terms may need to be modified to specifically address the differences inherent in hazardous substances. These definitions in the oil regulations are based on historical spill data of the volumes of oil discharged into the marine environment. For hazardous substance response plan regulations, the definitions may need to be modified to reflect the historical data for the volumes of hazardous substances that have been released in the marine environment provided that the data is reliable.

8. Other Response Plan Requirements

Section 4202(a) of OPA 90 requires both oil and hazardous substance response plan regulations to address issues such as plan review and approval; consistency with the National Contingency Plan and Area Contingency Plans; identification of the qualified individual; identification by contract or other approved means of private response resources; description of training, equipment testing, drills, and responsibilities of vessel and facility personnel; periodic updating of plans; and resubmission and approval after each significant change of a plan. These issues and others (i.e., plan format) are addressed in the VRP and FRP IFRs for oil and could be handled similarly for the hazardous substance response plan regulations.

9. Developing Effective Response Plans

A key element in developing effective response plans for hazardous substances is the development of an approach for addressing the different types of hazardous chemicals. In addition to the 296 hazardous substances regulated by the FWPCA, there are a number of additional hazardous chemicals that are not designated as hazardous substances by the EPA under FWPCA but that are transported in bulk in the marine environment. Effective response planning should include all hazardous chemicals carried in bulk, not just those determined as hazardous substances by the EPA. The Coast Guard is interested in the views of the regulated community and the general public with respect to response plans for hazardous chemicals not regulated under the FWPCA.

Discussion of Areas of Regulation Under Consideration

Regulations covering the following areas are being considered to implement the response plan requirements of section 311(j) of the FWPCA. Comments and suggestions from interested parties are invited.

1. Response Plans

(a) Response plans for MTR facilities would be submitted to the cognizant Captain of the Port (COTP) for approval.

(b) Response plans for vessels would be submitted to the Commandant (G–MEP), U.S. Coast Guard Headquarters, Washington, DC for approval.

(c) Each plan may be required to contain the following information:

—Emergency notification procedures.
—Vessel-specific or facility-specific information.
—Name of qualified individual.
—List and location of release response and fire extinguishing equipment (including equipment on board the vessel or equipment located at the facility).
—Response personnel, job descriptions for key positions, and their training.
—Cargo or commodity hazard identification.
—Emergency response guidelines for each hazardous substance (i.e., containment, cleanup, or other appropriate response measures).
—Emergency response guidelines for different scenarios (i.e., large and small, fires and explosions, collision, grounding, salvage operations, piping failure, releases in sensitive or populated areas, offshore and shoreside releases, etc.).
—Salvage operations (vessels only).
—Lightering capabilities (vessels only).
—Waste disposal.
—Worker health and safety.
—Threats to environment or public health and safety.
—Identification of sensitive areas and resources to protect sensitive areas (facilities only).

(d) Response plans would be required to be consistent with the National Contingency Plan (NCP) [40 CFR part 300], as required by 33 U.S.C. 1321(c)(2), and the Area Contingency Plan (ACP) as required by section 311(j)(4) of the FWPCA [33 U.S.C. 1321(j)(4)], as amended by section 4202(a) of OPA 90.

All plans may be required to follow a general format. Certain aspects of the response plan for vessels, such as on board emergency response procedures would be ''generic'' in form, regardless of the vessel's port of call. These generic aspects would form the main ''core'' of the response plan. Information that is unique to a port of call, however, such as clean up contractors or local contracting representatives, would be included in the response plan as appendices.

(e) A qualified individual would have to be identified in the response plan. A ''qualified individual'' is a representative of a vessel or facility with written authority to engage in contracting with response companies and to activate necessary funds from the owner or operator to carry out cleanup activities. This individual should have sufficient training to direct response contractors pending the arrival of a company representative. The qualified individual must have the means for immediate communication with the appropriate Federal official and the persons providing personnel and equipment for release response.

(f) A communications network, such as a release response telephone list, would be required to identify which parties must be contacted (i.e., Federal agencies, contractors, a call-up tree) and how those communications would be established.

(g) Vessel and facility owners or operators would be required to identify and ensure by contract or other approved means, the availability of private personnel and equipment necessary to respond to a release. When

appropriate, the Coast Guard would provide guidelines regarding what type and amounts of equipment are required for an average most probable, maximum most probable, and worst case discharge.

The Coast Guard would maintain an oversight and enforcement role in verifying the contractual availability of equipment and personnel between pollution contractors and owners or operators of tank vessels or facilities. The local COTP representative would determine that local contractors possess the necessary qualifications and resources to address hazardous substance releases for which they are contracted. In addition, the Coast Guard could review the contract arrangements between the vessel or facility and contractor for the interim period when the response plans are submitted but not yet approved.

(h) The plan would be required to address training, equipment testing, periodic unannounced drills, and the response actions of vessel or facility personnel. The regulations would specify criteria describing acceptable levels for approval. For vessels, response actions and persons assigned would be listed in the ship's station bills and muster list, which is currently required under 46 CFR subpart 35.10—Fire and Emergency Requirements.

(i) Response plans would be submitted for initial approval as well as for approval of each significant change. Significant changes would include changes in a vessel's or facility's configuration; changes in hazardous substance handled, stored, or transported; changes in the name and authority of a person in charge; changes of the owners or operators (depending on who received approval of the plan); or changes in the identification of cleanup operators.

(j) Response plans would be required to be updated periodically.

2. Response Equipment

The response planning requirements for the response equipment would address the following areas:

(a) The type, quantity, and capacity of response equipment to be carried on tank vessels or staged at locations ashore.

(b) The periodic inspection of response equipment, including the standards of inspection.

(c) The method for enforcement, whether through required recordkeeping or other means.

The regulations regarding vessel and facility response plans for discharges of hazardous substances may closely parallel those regulations for vessel and facility response plans for discharges of oil. Because the physical properties of these various hazardous substances are different from those of oil, alternative cleanup measures will need to be considered.

3. Federal Response and Contingency Plan Requirements

OPA 90 is the latest of a series of statutes that regulate hazardous chemicals. An onshore facility is required to comply with numerous planning requirements associated with the handling, storage, transportation, and manufacturing of various hazardous chemicals. The following discussion is a brief summary of the various Federal planning requirements for hazardous chemicals.

Section 311(j)(5)(c) of the FWPCA [33 U.S.C. 1321(j)(5)(c)], as amended by the Oil Pollution Act of 1990 (OPA 90), sets forth certain minimum requirements for vessel and facility response plans for FWPCA hazardous substances. The plans must—

—Be consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Area Contingency Plans (ACPs);

—Identify the qualified individual having full authority to implement response actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing response personnel and equipment;

—Identify and ensure by contract or other approved means the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

—Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent a discharge or the substantial threat of a discharge;

—Be updated periodically; and

—Be resubmitted for approval of each significant change.

In the case of onshore facilities, the OPA 90 Conference Report recognizes that a ''substantial number of facilities that handle, store or transport hazardous substances are subject to emergency planning requirements under the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Occupational Safety and Health Act, and other Federal statutes.'' [H.R. Rep. No. 101–653, 101st Cong. 2nd Sess. 1990 at p. 151] Additionally, the Conference Report recognizes that chemical emergency planning requirements are in effect for communities under the Emergency Planning and Community Right to Know Act (EPCRA). The Report also states that the President should select onshore facility response plans in a manner that will avoid duplicative or conflicting response plan review requirements and should ensure that such plans are coordinated with the community emergency planning effort under EPCRA.

Resource Conservation and Recovery Act (RCRA)

EPA regulations at 40 CFR part 264, subpart D issued under RCRA establish requirements for owners and operators of hazardous waste facilities to use in developing facility-specific contingency plans. The plans must include response procedures; a list of all persons qualified to act as a facility emergency coordinator; a list of all emergency equipment and, when required, decontamination equipment at the facility; evacuation plans, when evacuation could be necessary; and arrangements upon which local police departments, fire departments, hospitals, contractors, and State and local emergency response teams have agreed to coordinate emergency services. The regulations pertain to facilities that treat, store, or dispose of hazardous wastes as defined in 40 CFR 261.3. Hazardous wastes include characteristics wastes (*see* 40 CFR part 261, subpart C) and listed wastes (*see* 40 CFR part 261, subpart D).

EPCRA or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA)

EPCRA requires Local Emergency Planning Committees (LEPCs) to develop local emergency response plans for their community and review them at least annually. Under EPCRA, facilities are required to notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) if they have ''extremely hazardous substances'' (*see* 40 CFR part 355 for a list of the 360 ''extremely hazardous substances'') present above threshold planning quantities. In addition, upon request of the SERC or LEPC, the facility is required to provide the LEPC with any information necessary to develop and

implement the LEPC plan. Local emergency response plans must identify regulated facilities; describe procedures, equipment, and personnel to respond to releases; and include evacuation plans. Because of this requirement that certain facilities participate in emergency planning under EPCRA, it is likely that some overlap may exist with OPA 90 response plan requirements. In addition, under some state EPCRA laws facilities are required to prepare contingency plans.

Clean Air Act

Under section 112(r) of the Clean Air Act (CAA), as amended, owners and operators of stationary sources with ''regulated substances'' above specified threshold quantities will be required to prepare risk management plans (RMPs), which must include a hazard assessment (including, among other things, an evaluation of worst-case accidental releases), a prevention program, and a response program. Owners and operators are to provide a copy of the RMPs to the State, local planning and response authorities, and the Chemical Safety and Hazard Investigation Board. The list of ''regulated substances'' promulgated under section 112(r) authority includes a diverse array of toxins (77), flammables (63), and high explosives [*see* 59 FR 4493; January 31, 1994].

Section 112(r)(7) of the CAA requires that the hazard assessment evaluate worst case accidental releases, estimate potential release quantities, and determine downwind effects including potential exposures to affected populations. Owners or operators must also develop an emergency response program that includes specific actions to be taken in response to a release including procedures for notifying the public and response agencies, emergency health care, and employee training measures. EPA is currently developing regulations to implement the new CAA RMP requirements. In addition, some states already have RMP rules in place that require facilities to develop emergency plans.

In addition, section 112(r)(1) of the CAA, as amended, indicates that stationary sources have a general duty in the same manner and to the same extent as under the Occupational Safety and Health Act to—

—Identify hazards that may result from accidental releases of regulated substances or other extremely hazardous substances;

—Design and maintain a safe facility, taking such steps as are necessary to prevent releases; and

—Minimize the consequences of accidental releases which do occur.

Section 112(r)(1) imposes upon owners and operators of facilities emergency response duties for a broad range of hazardous chemicals not restricted to a named list. Also under CAA section 112(r)(9), the EPA Administrator may issue an administrative order to seek such judicial relief as is necessary to abate an actual or threatened accidental release when the Administrator determines there may be an imminent and substantial endangerment to human health or the environment.

Occupational Safety and Health Act (OSHA)

OSHA has several sets of standards that envision some form of emergency response planning for facilities that handle, store, or transport hazardous substances. These requirements are directed mostly at the protection of facility employees and emergency responders. The OSHA Process Safety Management Standard (*see* 29 CFR 1910.119) requires the preparation of emergency response plans under 29 CFR 1910.38(a) or 29 CFR 1910.120 for employers to prevent or minimize the consequences of catastrophic releases of certain chemicals in the workplace. Employers must develop formal process safety management program for facility processes that involve a listed highly hazardous substance at or above the threshold quantity. The list of highly hazardous substances (*see* 29 CFR 191.119) includes 125 toxic and reactive chemicals as well as several mixtures. The program covers employee participation, process safety information, process hazard analysis, operating procedures, training, contractors, pre-start up review, mechanical integrity, hot work permits, management of change, incident investigation, emergency planning and response, and compliance audits.

The EPA/OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard (see 29 CFR 1910.120) establishes requirements for employers and organizations to protect the safety and health of workers involved in such operations. The operations covered by this standard are cleanups at uncontrolled hazardous waste sites, corrective actions and routine hazardous waste operations at RCRA treatment, storage, or disposal (TSD) facilities, and emergency response operations without regard to location. Employers must implement a written safety and health program that includes an organizational work plan, site evaluation and control, information and training, personal protective equipment, monitoring, medical surveillance, decontamination procedures, and an emergency response program. The HAZWOPER list of substances is broad and includes all 296 FWPCA hazardous substances.

Coordination of Planning Requirements

The issue of coordinating multiple contingency planning requirements in an attempt to minimize duplication on the regulated community is a focal point of the recently published Presidential review of Federal agency authorities and coordination responsibilities for release prevention, mitigation, and response required by section 112(r)(10) of CAA. EPA's Chemical Emergency Preparedness and Prevention Office, in cooperation with the National Response Team, conducted a study titled *A Review of Federal Authorities for Hazardous Materials Accident Safety* (EPA550–R–93–002) to fulfill the Congressional mandate. The review concludes that, while achieving its statutory goals, the existing regulatory scheme is both complex and costly.

With respect to contingency planning, the report notes that the previously mentioned statutes were enacted independently of one another resulting in inconsistent components in the regulatory process. Some planning requirements are more stringent than others; some require specific technical features; and some require submission of the contingency plans for Federal or State and local review. Also, because different statutes address slightly different hazards using different lists of substances, the number and type of facilities required to develop these plans varies. Moreover, there is seldom harmony in the required formats or elements of particular plans. Although the study team did not find many actual conflicts among planning requirements, there were numerous differences in terminology and emphases: these differences have resulted in facilities preparing multiple plans to ensure compliance.

To provide relief for the redundant and overlapping federal response planning requirements faced by facility operators, under the leadership of the Environmental Protection Agency (EPA), the National Response Team is producing guidance on an integrated planning approach which would ultimately result in the ability to prepare one plan to cover multiple federal response planning requirements, thereby reducing burden and cost for the regulated community. The ''One Plan'' guidance is being developed

through a cooperative effort among numerous NRT agencies, state and local officials, and industry and community representatives. Response plans developed in accordance with One Plan guidance will be acceptable to the federal agencies responsible for reviewing and/or approving response plans developed to comply with the following regulations:

(a) EPA Oil Pollution Prevention Regulation (Spill Prevention, Control and Countermeasure and Facility Response Plan Requirements)—40 CFR part 112;

(b) MMS Facility Responses Plan Regulation—30 CFR part 254;

(c) RSPA Pipeline Response Plan Regulation—49 CFR part 194;

(d) USCG Facility Response Plan Regulation—33 CFR part 154, Subpart F;

(e) EPA Risk Management Programs Regulation—40 CFR part 68 (proposed);

(f) OSHA Emergency Action Plan Regulation—29 CFR 1910.38(a);

(g) OSHA Process Safety Standard—29 CFR 1910.119;

(h) OSHA HAZWOPER Regulation—29 CFR 1910.120; and

(i) EPA Resource Conservation and Recovery Act Contingency Planning Requirement—40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52.

The integrated contingency planning approach is an effective way to ensure response procedures are coordinated throughout the facility and to avoid duplicative and potentially conflicting plans. The One Plan format does not change the actual planning requirements imposed by federal statute. The Coast Guard fully expects that any future hazardous substance response planning requirements resulting from this ANPRM will be accommodated within a facility's ''One Plan''.

Analysis reveals that there may be a significant degree of overlap between the types of facilities and chemicals that would be regulated under prospective OPA 90 requirements and those under existing response planning requirements. However, the specific intent of OPA 90, with respect to hazardous substances, is to address the discharge or substantial threat of a discharge of a limited number and type of substances (i.e., FWPCA hazardous substances) to U.S. surface waters. The other regulatory programs discussed previously, for the most part, have slightly different emphases in terms of the type of chemicals covered, the primary media considered (e.g., air, land, water), and the general purpose of the regulation (i.e., protection of the environment, protection of workers, etc.).

The existence of these related planning requirements provide an opportunity for the promulgation of regulations which allow a certain degree of flexibility in the way owners or operators meet the OPA 90 statutory requirements. The Coast Guard requests comment on specific examples of how existing Federal and State planning requirements can be shown to satisfy one or more of the OPA 90 mandates. The Coast Guard also requests comment on which OPA 90 requirements may not be adequately addressed in existing plans and how such requirements can be implemented in the least burdensome manner. For example, if the Coast Guard accepted a plan prepared to meet State or other Federal requirements (or the Federal baseline standard mentioned previously) as long as it was adopted to meet OPA 90 requirements and cross-referenced in an appropriate manner, would owners or operators still choose to develop a separate plan?

The Coast Guard will provide the responses to this ANPRM to other Federal agencies so that these agencies may develop options to satisfy the OPA 90 mandate while minimizing the burden on facility owners and operators.

Assessment

At this early stage in the rulemaking process, the Coast Guard anticipates that any final rule may be considered a significant regulatory action under section 3(f) under E.O. 12866. The Coast Guard anticipates that any final rule will also require an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11030; February 26, 1979).

This rulemaking may have a substantial effect on States that have or are developing response plan requirements. It may also affect domestic and international shipment of hazardous substances to and from the United States and may generate substantial public interest and controversy. The primary economic impact of these regulations would be on those tank vessel and facility owners that would have to comply with any new requirements. These vessels would include approximately 270 tank vessels and 540 tank barges carrying hazardous materials: these figures represent the number of these vessels that called in United States waters in 1990. The Coast Guard estimates that this regulation would affect 300 MTR facilities. In addition, these regulations may also impact private hazardous substance release response contractors and spill cooperatives.

Several alternative methods of implementing the rulemaking for vessel response plans have been identified. These include the following: (1) Requiring response plans for specific tank vessels based on factors such as vessel route, capacity, or product carried; (2) requiring generic response plans for all tank vessels, with port specific appendices; and (3) requiring individualized response plans for each tank vessel and each facility.

The full extent of the economic and operational impact cannot be quantified at this time. A primary purpose of this advance notice is to help the Coast Guard to develop the rule and determine the cost of any new requirements, to the extent that they exceed current legal and regulatory requirements or current industry practice. The Coast Guard anticipates that the public response to this advance notice will assist it in writing proposed rule and a draft regulatory impact analysis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) Small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Because specific requirements have not yet been proposed, the Coast Guard is currently unable to determine the effect of regulations upon small entities. Accordingly, an Initial Regulatory Flexibility Analysis discussing the impact of this anticipated rulemaking on small entities has not been prepared. However, the Coast Guard anticipates that there is a potential significant impact on a substantial number of small businesses, small not-for-profit organizations, and State and local governments. The Coast Guard expects that the comments received on this advance notice will assist it in determining the number of affected small entities, and in weighing the impacts of various regulatory alternatives for the purpose of drafting these regulations.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of

Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

The Coast Guard cannot yet estimate the paperwork burden associated with this rulemaking because no regulations have been drafted. However, at a future stage, the Coast Guard may require that tank vessel and facility owners and operators maintain records of response plan approvals and equipment inspections which would be available upon request to the Coast Guard as well as developing and maintaining response plans. The Coast Guard expects that comments received on this advance notice will assist it in estimating the potential paperwork burden, as required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Once estimated, the Coast Guard will submit this proposed recordkeeping requirement to the Office of Management and Budget (OMB) for approval.

Federalism

This advance notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Based on the information available to it at this time, the Coast Guard is unable to determine whether this rulemaking would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Some standardization of vessel response plan requirements is necessary because affected vessels move from port to port in the national marketplace and separate regulations and plans for each port would be economically burdensome and potentially unsafe.

Some standardization of the MTR facility response plans may also be necessary. MTR facilities may be regulated by other Federal agencies, and some States may impose their own response planning requirements. OPA 90 prohibits Federal preemption. Many facilities operate in the national marketplace and excessive variation in the requirements would be economically burdensome and potentially unsafe. The Coast Guard specifically seeks public comment on the federalism implications of this proposal.

Environment

The Coast Guard considered the environment impact of this anticipated rulemaking and expects that it should have a positive impact on the environment by ensuring that hazardous substance response planning has been conducted by owners or operators of tank vessels and facilities for the purpose of enhancing preparedness to contain and recover releases of these products. Before a proposed rule is published, an environment analysis will be prepared in accordance with Coast Guard requirements, COMDTINST M16475.1B. That document, which will describe the anticipated environmental effects of the proposed rulemaking, will be placed in the docket for inspection or copying at a location indicated in the proposed rule. The Coast Guard invites comments addressing possible effects this proposal may have on the human environment, or on potential inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment. A final determination regarding the possible need for an environmental assessment will be made after receipt of relevant written comments.

Questions

To adequately address the issues discussed in this advance notice, additional information is needed. Responses to the following questions would be particularly useful in developing a future Notice of Proposed Rulemaking (NPRM).

Reponse Plans

1. Are there any historical data existing on hazardous substance discharges in the marine environment (e.g., causes of discharges, resulting injuries or fatalities, number of hazardous substances discharged, volume of discharges, need to evacuate, and resulting natural resource and property damage? If so, where can such data be found? Are there any restrictions on the accessibility of this data?

2. Are there any data regarding the effectiveness of hazardous substance response planning in terms of preventing occurrences of casualties and incidents, reducing the volume of releases after the occurrences of casualties and incidents, improving containment and recovery, if possible, and avoiding injuries and fatalities)?

3. How many companies operate tank vessels that carry, or facilities that store or transport hazardous substances? On the average, how many vessels or facilities are operated by a single company?

4. How should response plans for non-FWPCA hazardous chemicals which are carried in bulk (e.g., noxious liquid substances as listed in Annex II of MARPOL) be addressed?

5. How many different types of hazardous substances are carried during a single voyage? How many different types of hazardous substances are handled, stored, or transported by a single MTR facility?

6. What are appropriate hazardous substance storage and throughout thresholds for selecting facilities that could cause substantial harm to the environment and for selecting the subset of those facilities that could reasonably be expected to cause significant and substantial harm to the environment? Should the Coast Guard use the capacity of a vessel calling at an MTR facility as a means of selecting facilities that could reasonably be expected to cause significant and substantial harm to the environment?

7. Should the CAMEO program be used to determine the appropriate response strategies for the various hazardous substances which may be involved in a potential release? What alternative guidance is available? Would you consider it more appropriate? If so, why?

8. For MTR facilities that are part of an onshore non-transportation related fixed facility complex, are there potential conflicts in the areas of hazardous substances regulated and the amount of a worst case discharge?

9. Are there potential gaps in existing Federal regulatory coverage for hazardous substance response plans for the onshore non-transportation fixed facility portion of an MTR complex?

10. What information should be required in the tank vessel and facility response plans?

11. Should the information provided in response plans for vessels carrying hazardous substances and for facilities handling hazardous substances vary depending on the type of substances transported? How should substances be classified? Should each class of hazardous substance have a different plan? Should vessel owners and facility owners have a separate plan for each product they handle or should they have product groups within the plan? How would response strategies differ for the various types of hazardous substances?

12. Should all FWPCA hazardous substance be regulated at the same threshold or should thresholds for individual substances be set based upon the specific considerations associated with each substance? Should the threshold level be based upon the reportable quantity (i.e., quantities of hazardous substances that may be harmful as set forth in 40 CFR 117.3, the

discharge of which is a violation of section 311(b)(3) of the FWPCA [33 U.S.C. 1321(b)(3)] and requires notice as set forth in 40 CFR 117.21 for the substance) or a multiple of the reportable quantity? What would be an appropriate multiplier for such a determination?

13. How should the concept of ''responding to the maximum extent practicable'' be applied for purposes of planning the response to a worst case discharge of a hazardous substance? Should it be the same for hazardous substances as it is for oil in 33 CFR parts 154 and 155?

14. How many U.S. companies provide response services for hazardous substance releases and in what geographic areas would these services be available? What response capabilities do these services have in terms of amount and type of equipment and personnel available?

15. How should the concept of ''contracts or other approved means'' be applied for the purposes of planning the response to a worst case discharge of a hazardous substance? What aspects of hazardous substance spill response may warrant treatment different form oil spill responses? What role do public responders (e.g., local fire department personnel) play in response to releases of FWPCA hazardous substances and how should their involvement be reflected in the planning requirements?

16. What format should be used for the response plans?

17. For vessel response plans, what information should be required in the ''core plans'' and in port specific annexes?

18. How often should the response plans be reviewed and updated by vessel and facility owners and the Coast Guard? Should there be any other reviewing entity? Should the frequency of review be dependent on the type of substance transported?

19. Where should the response plans be kept on an unmanned tank barge or a tank barge that is at anchor or underway? Should the plans be kept on board a towboat when engaged in towing a barge with a hazardous substance in bulk as cargo?

20. Are there vessels and facilities which have voluntarily prepared response plans addressing a potential release of a hazardous substance? Are there response plans for hazardous substances which were prepared in response to other U.S. or international regulations or policies?

21. Should the owner or operator of a facility that has already prepared an emergency or contingency plan under Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) [Pub. L. 99–499, 100 Stat. 1613] or other applicable statute (EPCRA, RCRA, CAA, and HAZWOPER) be permitted to amend that plan to incorporate hazardous substance response plan provisions to comply with the requirements of OPA 90?

22. If requested, the owner or operator of a facility must submit Tier Two information forms to local authorities with jurisdiction over the facility under Title III of SARA. Could the Title III, Tier Two form be supplemented to comply with the requirements of OPA 90 regulations?

23. Should the term ''qualified individual'' be define differently from its definition in oil response plan regulations? If so, why?

24. In addition to navigating the vessel, should the vessel crew be required to do more than attempt to control or stop the discharge and report it to the proper authorities?

25. Should hazardous substance response contractors listed by a vessel or a facility (as a condition of approval of the vessel's or facility's plan) be required to develop a local response plan consistent with the Area Contingency Plan?

26. How should worst case discharges be determined for an MTR facility? Should it be the same for hazardous substances as it is for oil? If not, upon what should this determination be based? Should worst case discharge quantities be based on probable accident or incident scenarios and resulting releases?

27. How should adverse weather be defined and considered in determining a worst case discharge of a FWPCA hazardous substance? How might weather concerns differ when responding to a hazardous substance discharge versus an oil discharge? For example, could a lack of wind, rain, and strong currents result in a riskier situation when a discharge of a hazardous substance is involved because of the potential for the substance to accumulate due to lack of dispersion?

28. What should the definition of average most probable and maximum most probable discharge be for vessels and facilities?

29. Do discharges that are smaller than a worst case discharge dictate different response strategies and resource commitments?

30. What is an appropriate response action for releases of hazardous substances as defined in the National Contingency Plan [40 CFR 300.5] as minor, medium, major, or catastrophic releases, or for a worst case discharge, as defined in section 311(a) of the FWPCA [33 U.S.C. 1321(a)], as amended by section 4201 of OPA 90? How would the appropriate response action be determined? Would it be measured by distance from the release, distance from the closest equipment launching facility, type of substance discharged, or by another means? Should response action planning requirements reflect consideration of the hazardous substance properties and hazards?

31. Should vessel damage stability and general arrangement plans be maintained off the vessel as well as on board for salvage and firefighting purposes? Where should they be located (i.e., Coast Guard Marine Safety Center, local COTP, classification societies)? How accessible should they be?

32. Should each vessel owner be required to maintain a response plan for each U.S. port of call? Should the vessel owner or agent representative in each port maintain a local plan which would be sufficient for the vessels calling under his control?

33. What involvement, if any, should State or local authorities have in the review or approval of vessel and facility response plans?

34. Using the definition of ''tank vessel'' in 46 U.S.C. 2101, what impact will these regulations have on vessels that carry limited quantities of hazardous substances in bulk as cargo or cargo residue (passenger, cargo, or miscellaneous vessels)? Should any vessels be exempt from these requirements? If so, what types, tonnages, and capacities should these exemptions cover and why?

35. For certain classes of materials should the response plan include evacuation and public notification procedures for areas affected by the release as appropriate? How should plans address threats to public health and safety, including bodies of water used for drinking supplies? How should plans address threats to air quality?

36. Should a facility be required to plan for possible releases of all hazardous substances carried by vessels calling at the facility even if the facility does not typically handle those substances?

37. What type of response equipment should be required at facilities? To what size discharge, if any, should the facility be prepared to respond?

38. Should dispersion modeling (air and water) be required? Should a minimum standard be set? What models are available to estimate the dispersion of hazardous substances in the air or water?

39. Following an incident, what requirements should be in place for

taking samples of the water and the air? Should response plans include requirements for air and water sampling?

Carriage and Inspection of Response and Firefighting Equipment

40. What types and how much hazardous substance response equipment and firefighting equipment currently are carried on board tank vessels or located at facilities?

41. Should all vessels required to have response plans also be required to carry response equipment? Should some vessels be exempt from equipment requirements?

42. What firefighting equipment would be necessary to have on board a vessel or staged at a facility to respond to a possible fire associated with the discharge of hazardous substances? Would the type of equipment needed vary dependent upon the type of substance discharged? What are the various firefighting options?

43. What equipment other than response and firefighting equipment (e.g., transfer equipment, rescue equipment, and monitoring equipment) should be addressed in response plans to prevent or mitigate a potential hazardous substance release?

44. What response equipment is appropriate for vessels or manned tank barges to carry, if any? Would the type of response equipment needed vary dependent upon the type of substances carried?

45. What response equipment should be carried on board unmanned tank barges, if any?

46. What are the appropriate capabilities of the equipment?

47. Should MTR facilities be required to have response equipment staged at the facility?

48. If facilities are not required to stage equipment at the facility, how much time should be allowed to bring response resources to the facility?

49. How large a discharge should the response equipment be capable of handling?

50. What equipment-inspection requirements are appropriate?

51. What equipment needs to be inspected?

52. Should the inspection be the responsibility of the owner or operator and who should be required to maintain a record of that inspection?

53. Should spot inspections of the equipment be made by Coast Guard personnel as part of the vessel and facility inspection?

54. Should third-party inspection be used?

55. What action should be taken if required equipment is missing or in disrepair?

56. What inspection requirements are appropriate for equipment maintained by a cooperative or an independent organization?

57. Should the required equipment be approved by the Coast Guard?

58. Should the area of the vessel's operation or the regional availability of support equipment affect the on board equipment-carriage requirements?

59. Should tank barges in the same tow or fleeting area be permitted to share equipment?

60. How should response equipment be deployed on unmanned tank barges? Who should deploy the response equipment?

61. If containment boom is required, how much should be carried? Should it be sufficient to completely encircle the vessel?

62. Should plans require an assessment of a local port's municipal capabilities to respond to a hazardous substance release, including firefighting capabilities?

63. What involvement, if any, should State or local authorities have in the approval or inspection of response equipment?

64. Are there methods available to rate the capabilities of the response and containment equipment?

65. Should frequency of inspections be the same as in the existing oil response planning regulations?

66. How would compliance with this proposed regulation impact compliance with other existing hazardous substance requirements?

67. Is there sufficient response equipment available to respond to a worse case discharge? What, if any, caps should be placed on equipment requirements?

68. Where is response equipment currently located? How should required response times take into consideration the location of the equipment? Are the response times established in the VRP and FRP IFRs for oil appropriate for hazardous substance response planning in rivers and canals, inland, nearshore, offshore, ocean, and Great Lakes waters? If not, what other response times are appropriate?

Training

69. At the present time, what type of training do vessel and facility personnel receive in the worker safety and response aspects to hazardous substance releases? How many vessel and facility personnel receive such training?

70. What training in the use of response equipment should be required for vessel and facility personnel?

71. Should the Coast Guard or another entity certify providers of this training?

72. Who should be required to have response training (i.e., licensed, unlicensed, deck or engine department personnel on board vessels) among the vessel's crew and the facility's employees?

73. Should mariners be required to have their licenses or merchant mariners' documents endorsed to show that the mariners have completed emergency response training?

74. How can mariners and facility personnel demonstrate completion of emergency response training?

75. What training in the implementation of the required response plans should be included?

76. What specialized firefighting training should be required for the crew of vessels carrying hazardous substances and personnel of facilities that handle, store, or transport hazardous substances? How will the training vary dependent upon the type of substances transported by the vessel or handled, stored, or transported by the facility?

77. What level of training will be required for qualified individuals and responders?

78. Should hazardous substance response contractors be separately classified by the Coast Guard? if yes, what should the criterion be?

Drills

79. Should drills be required in accordance with existing regulations, i.e., as required in 33 CFR parts 154 and 155?

80. Should the Coast Guard adopt the National Preparedness for Response Exercise Program (PREP) guidelines for hazardous substances?

81. Should there be a requirement to maintain a record of drills conducted? Assuming records of drills will be required, where should they be maintained? Should they be maintained on board vessels and at facilities?

82. How should drill performance be measured?

83. What should the drill requirements be and should they be different for different classes of substances?

84. How should drill performance be measured? What should be considered acceptable performance (i.e., notification time, response mobilization time, etc.)?

Economic Issues

85. What would be the economic impact of requiring each tank vessel and facility to develop and implement a hazardous substance release response plan? How would this impact vary

dependent upon the type of hazardous substances transported or handled?

86. How much would it cost to develop a hazardous substance response plan, as described in this ANPRM, for single tank vessel or facility? How would this cost vary depending upon the size and type of tank vessel or facility? How would this cost vary by type of hazardous substance transported, handled, or stored?

87. Would the per vessel or per facility cost to develop a response plan for a fleet or tank vessels or group of facilities be lower than the cost to prepare a response plan for a single vessel or facility?

88. What would be the cost to owners and operators of vessels and facilities to annually review and update response plans?

89. What would be the economic impact for tank vessel or facility owners or operators of maintaining on board or on site specialized firefighting equipment?

90. What would be the economic impact on tank vessel or facility owners or operators of reviewing and updating hazardous substance release response plans?

91. What would be the economic impact on tank vessel or facility owners or operators of maintaining on board or on site hazardous substance release response equipment?

92. What would be the economic impact of these requirements on small entities, as defined by section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)]?

93. What would be the economic impact for tank vessel and facility owners or operators of maintaining contracts with release response companies in each port they utilize?

94. What would be the economic impact on the cleanup industry of enhancing hazardous substance response capabilities?

95. How much would it cost annually for a facility or tank vessel to retain the services of a hazardous substance spill response contractor to address its worst case discharge? How would this cost vary by size and type of facility or vessel?

96. What would be the economic impact of requiring tank vessel and facility owners or operators to train and drill personnel in worker safety and release response?

Comments are not limited to the preceding questions and are invited on any aspect of implementing the response planning requirements for hazardous substance releases and the carriage of response and firefighting equipment.

Dated: April 24, 1996.

Robert E. Kramek,

Admiral, U.S. Coast Guard, Commandant.

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Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101, 201, 369 et al.
Warning Statements for Products Containing or Manufactured With Chlorofluorocarbons and Other Ozone-Depleting Substances; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 201, 369, 501, 740, and 801

[Docket No. 93N–0442]

Warning Statements for Products Containing or Manufactured With Chlorofluorocarbons and Other Ozone-Depleting Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rule; opportunity for comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing interim regulations governing warning statements for products containing or manufactured with chlorofluorocarbons (CFC's) and other ozone-depleting substances. The amendments prescribe specific warning statements and additional labeling statements for physicians and patients. These additional statements direct patients to consult their physicians before discontinuing use of a prescription medical product because of concerns about the product's effect on the environment and public health. The interim rule also provides warning statements for over-the-counter (OTC) drug and device products and directs patients to consult their physicians, health professional, or suppliers with questions about the products. In addition, the interim rule revises certain regulations concerning foods, cosmetics, and animal foods in a self-pressurized container with a CFC propellant in order to be consistent with current statutory requirements. FDA is issuing these regulations as an interim rule with opportunity for public comment.

DATES: Interim rule effective May 17, 1996; comments by August 1, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION:

I. Background

On February 11, 1993 (58 FR 8136), the Environmental Protection Agency (EPA) issued final regulations requiring, among other things, a warning statement on all products containing or manufactured with specific ozone-depleting substances. In general, the EPA regulations require each container or product containing or manufactured with CFC's, halons, carbon tetrachloride, and methyl chloroform to bear the following warning statement (58 FR 8136 at 8165):

> Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

EPA issued the rule under section 611 of the Clean Air Act (42 U.S.C. 7671(j)), which requires the warning statements on all products containing or manufactured with CFC's on or after May 15, 1993. In promulgating the rule, EPA noted that several comments had argued that certain prescription medical products, such as metered-dose inhalers, should be exempt from the labeling requirements because they are essential to the health of patients. The comments indicated that a warning statement might lead some patients to avoid their medication because of concerns about the product's effect on the environment or alarm over the words ''harms public health.'' EPA stated that it understood the importance of such products to patients as well as the need to ''tailor the labeling requirement to avoid unduly alarming patients,'' but also stated that it lacked the authority to exempt prescription medical products from the labeling requirement (see 58 FR 8136 at 8155). Consequently, EPA indicated that the statutorily required warning statement could appear on supplemental printed material intended for physicians rather than patients, provided that the supplemental printed material intended for patients contain similar warning language without the words ''warning'' and ''harms public health'' (see 58 FR 8136 at 8156). EPA also indicated that manufacturers of prescription medical products could supplement this information with additional information for patients. EPA anticipated that FDA would provide the specific additional language (see 58 FR 8136 at 8156). On June 29, 1993 (58 FR 34812, corrected on July 29, 1993, 58 FR 40656), FDA published a notice in the Federal Register setting out alternative labeling warning language designed not to cause undue patient alarm. The warnings were essentially identical to the warnings contained in this interim rule. As part of the notice, FDA requested comments about CFC warning statements. These comments are summarized and responded to in section III of this preamble.

Since 1977 (42 FR 22018, April 29, 1977), FDA has required, with a few exceptions, that OTC human drug and nonrestricted device products containing CFC propellants be labeled with a warning (21 CFR 369.21 and 801.425). In addition, FDA established regulations in §§ 101.17(c), 501.17(c), and 740.11(c) (21 CFR 101.17(c), 501.17(c), and 740.11(c)) that required that the package of a food, animal food, or cosmetic in a self-pressurized container in which the propellant consists in whole or in part of a fully halogenated CFC bear the following warning statement:

> Warning: Contains a chlorofluorocarbon that may harm the public health and environment by reducing ozone in the upper atmosphere.

These regulations also provided requirements for placement and conspicuousness of the warning statement. The required warning statement applied only to self-pressurized containers that use CFC as a propellant. For example, for foods, the use of the warning statement was not required when the CFC was used as a stabilizer in food toppings and spreads (§ 101.17(c)(3)).

Since 1978 (43 FR 11301, March 17, 1978), FDA has prohibited the use of CFC propellants in most products it regulates (21 CFR 189.191, 300.100, 500.49, 700.23, and 801.417), except those listed as essential uses of CFC's in § 2.125 (21 CFR 2.125). Nonessential uses, which were prohibited by the 1978 final rule, included CFC use as a propellant in self-pressurized containers for foods and cosmetics. The prohibitions against nonessential uses of CFC's, set out in § 2.125(c), provide that ''any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant is adulterated and/or misbranded in violation of the act * * *.'' Section 2.125(e) exempts certain essential uses of CFC's from the adulteration and misbranding provisions of § 2.125(c). Further, § 2.125(f) specifically provides for the filing of a petition in accordance with 21 CFR part 10 to provide for the listing of additional essential uses so as not to subject the new use to the adulteration and misbranding provisions in § 2.125(c).

FDA notes that all of the essential uses of CFC's exempted from the adulteration and misbranding provisions of § 2.125 that are listed in § 2.125(e) apply to drug products. No

essential uses of CFC's for foods, cosmetics, or animal foods in self-pressurized containers have been identified.

II. Description of the Interim Rule

This interim rule describes the warning statements that should accompany human prescription drug, biologic, and device products, and restricted device products (hereafter referred to as ''prescription human medical products''), OTC drug and device products, and animal drug products that contain or are manufactured with CFC's, halons, carbon tetrachloride, methyl chloroform, and any other class I ozone-depleting substance designated by the EPA Administrator. (A list of class I ozone-depleting substances can be found in 40 CFR part 82, appendix A to subpart A, and any later EPA rulemaking adding other ozone-depleting substances.)

The interim rule provides two options for labeling prescription human medical products and OTC drugs and devices. The first option is EPA's warning statement:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

The second option for prescription human medical products contains FDA's additional language for the alternative warning statements. These warning statements are intended for physician labeling and patient labeling.

The warning for the physician package insert would be used in conjunction with an alternative warning statement that would appear on patient labeling as stated in the EPA final regulation (58 FR 8136 at 8166). These alternative warning statements would be written so that patients do not cease using their medications because of concerns over the products' effect on the environment or alarm over the words ''harms public health'' without first consulting their physicians. Instead, patients would be able to discuss their concerns with their physicians or, in the case of OTC drug or device products, another health professional or suppliers, and, if they wish, consider the use of alternative treatments. Also, physicians would be alerted to products that contain ozone-depleting substances. FDA believes that these warning statements will enable patients, physicians, pharmacists, other health professionals, and suppliers (in the case of devices) to make informed decisions.

Animal drug products manufactured with CFC's or other ozone-depleting products are required to use EPA's warning statement because the optimal alternative labeling statement is restricted to human medical products.

A. Prescription Human Medical Products

For prescription human drug products, new § 201.320 (21 CFR 201.320) provides both the EPA warning statement and FDA's alternative warning statements. New § 801.443 (21 CFR 801.443) provides the same two options for prescription and restricted devices. A biological product regulated as a drug or a device would use whichever labeling applies to the particular biological product. Under new §§ 201.320 and 801.443, all prescription drug and device products and restricted devices containing or manufactured with CFC's, halons, carbon tetrachloride, methyl chloroform, or any other class I ozone-depleting substance designated by the EPA Administrator shall use the EPA warning statement or specified alternative warning statements. For the first option for a warning statement, new §§ 201.320(a) and 801.443(a) provide the EPA warning statement quoted earlier in this preamble.

Under new §§ 201.320(a)(2) and 801.443(a)(2), the warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling, and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase.

For the second option, new §§ 201.320(b)(1) and 801.443(b)(1) provide FDA's alternative warning statements for supplemental printed materials intended for physicians and for patients. For patient labeling, the warning statement would appear on the product, its packaging, or supplemental printed material intended for the patient and would read as follows:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable].

This product contains [or is manufactured with, if applicable] [*insert name of substance*], a substance which harms the environment by destroying ozone in the upper atmosphere.

Your physician has determined that this product is likely to help your personal health. USE THIS PRODUCT AS DIRECTED, UNLESS INSTRUCTED TO DO OTHERWISE BY YOUR PHYSICIAN. If you have any questions about alternatives, consult with your physician.

These statements are designed to explain that the Clean Air Act requires the warning statement, but that patients should continue to use the prescription medical product unless instructed otherwise by their physicians. The labeling for the physician would be placed on the physician package insert after the ''How supplied'' section on the label describing the special handling and storage conditions.

For the package insert for the physician, the warning statement would state that:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [*or name of other class I substance, if applicable*].

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

A notice similar to the above WARNING has been placed in the information for the patient [or patient information leaflet, if applicable] of this product under Environmental Protection Agency (EPA) regulations. The patient's warning states that the patient should consult his or her physician if there are questions about alternatives.

For the second option, for the alternative placement on supplemental printed material described in new §§ 201.320(b) and 801.443(b), the interim rule specifies a particular location for the warning statement intended for the physician; provided, however, that a person places the statement intended for the patient on the product, its packaging, or supplemental printed material for the patient. The warning label shall be clearly legible and conspicuous on the product, its immediate container, or other labeling as to render it likely to be read and understood by consumers under normal conditions of purchase. FDA further advises all parties that new §§ 201.320 and 801.443 do not replace or relieve a party from the requirements under 40 CFR part 82.

FDA notes that EPA's regulations (58 FR 8136 at 8166 (40 CFR 82.108(c))) state that, for prescription human medical products that FDA finds to be essential for patient health, the warning statement may be placed in supplemental printed material intended to be read by the prescribing physician, as long as the alternative statement is placed on the product, its packaging, or supplemental printed material intended to be read by the patient at time of purchase. The agency believes that new §§ 201.320 and 801.443 are consistent

with these EPA requirements. However, FDA declines at this time to determine which products are essential for public health. The Clean Air Act requires that the warning labels be on all products containing or manufactured with CFC's on or after May 15, 1993. FDA believes it would be impractical and unnecessary to engage in case-by-case determinations of which medical products are essential to public health before permitting alternative warning statements. Thus, until FDA can establish criteria and make individualized determinations as to whether a drug is essential to public health, the most prudent course of action is to presume, for purpose of the warning statement, that all prescription human medical products are essential to public health.

B. OTC Drug and Device Products

This interim rule also removes the existing CFC warning statement for OTC drug products at 21 CFR 369.21 in favor of revised warning statements at new § 201.320 (a) and (c). This interim rule also removes the existing warning statement at 21 CFR 801.425 for nonrestricted devices in favor of a revised warning statement at new § 801.63 (21 CFR 801.63). Under new §§ 201.320 and 801.63, an OTC drug or device product that contains or is manufactured with CFC's or other class I substances may use the EPA warning statement or, as an alternative, state:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or other class I substance, if applicable]:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

CONSULT WITH YOUR PHYSICIAN OR HEALTH PROFESSIONAL IF YOU HAVE ANY QUESTION ABOUT THE USE OF THIS PRODUCT.

For OTC devices, the sentence of the label shall state:

CONSULT WITH YOUR PHYSICIAN, HEALTH PROFESSIONAL, OR SUPPLIER IF YOU HAVE ANY QUESTION ABOUT THE USE OF THIS PRODUCT.

The warning statement shall appear on the product, its immediate container, its packaging, or other labeling on or within the package from which the drug is dispensed, and must also be prominent and conspicuous so as to render it likely to be read and understood by consumers under normal conditions of purchase. This statement also must be consistent with EPA's regulations at 40 CFR part 82.

The agency believes that these warning statements for OTC drug and device products, like those for prescription human medical products, enable patients, physicians, and other health professionals to appreciate environmental concerns and will also avoid unduly alarming patients.

C. Foods, Cosmetics, and Animal Foods

As noted above, no essential uses of CFC's for foods, cosmetics, or animal foods have been identified. Any uses of CFC's or of other class I substances deemed to be appropriate in the manufacture of foods, cosmetics, and animal foods, or the indirect use of such substances as additives in the manufacture of packaging materials intended to be used for foods and animal foods, will subject the foods, cosmetics, and food-packaging materials to the labeling requirements established by EPA in 40 CFR part 82. Such EPA warning statement, as cited above in the discussion on prescription and OTC medical products, must be prominent and conspicuous so as to render it easily read and understood by consumers under ordinary conditions of purchase.

Because the EPA warning statement is applicable to all products ''manufactured with'' or ''that contain CFC's or other class I substances,'' the current exemption for CFC's used as a stabilizer in food toppings and spreads is no longer appropriate and such foods must comply with the applicable labeling requirements set forth in 40 CFR part 82. Thus, FDA is removing the specific requirement for the CFC warning statement for foods, cosmetics, and animal foods in §§ 101.17(c), 740.11(c), and 501.17 and the exemption for toppings and spreads in § 101.17(c)(3). In addition, FDA is revising these sections to reference the EPA labeling requirements designated for CFC's and other class I substances in 40 CFR part 82.

III. Comments

In the Federal Register of June 29, 1993 (58 FR 34812), FDA published a notice setting out alternative labeling warnings, designed not to cause undue patient alarm, that comply with the EPA regulation, and that are acceptable to FDA. As part of the notice, FDA requested comments about the labeling warning statements, which were nearly identical to the warnings contained in this interim rule. These comments are summarized and addressed below.

1. One comment suggested that use of the FDA alternative warnings be made mandatory. The comment stated that if manufacturers did not opt for the FDA alternative warning, and used the EPA warning instead, this could cause undue concern and result in patients stopping medication.

FDA believes that manufacturers should have the option of using the warning statement that best meets their particular needs. FDA does not believe that a manufacturer will use the EPA warning if there is any real likelihood that the warning's use will cause its customers to cease using the manufacturer's product.

2. Two comments said that, due to the small size of some containers for products with CFC's, any labeling rule should allow for alternative placement of the warning on outer packaging or other labeling.

FDA considered these concerns during the drafting of this interim rule, and the interim rule does allow such alternative placement.

3. One comment suggested that the phrase in the patient warning on prescription drug labeling ''[i]f you have any questions about alternatives please consult with your physician'' was too succinct and that the warning should indicate that alternative delivery systems for the drug product may be available and that an alternative therapy may not be necessary.

FDA believes that patients will understand that the alternatives available may include alternative delivery systems for the same drug substance and that any need for additional clarity is outweighed by the necessity of keeping this general warning concise.

4. Another comment suggested that the patient warning statement was not sufficiently inclusive in directing patients to contact their physician or pharmacist. The comment suggested that labeling refer to ''physician or health professional'' so as to refer to other health care professionals, such as physician's assistants or nurses, who can and do provide patients with information on drug products and medical devices.

FDA agrees with this comment in regard to OTC products. Health care professionals, other than physicians and pharmacists, are competent to advise patients on OTC therapies. However, in regard to prescription products, FDA believes that, in such a brief warning, the modification may cause confusion and may cause consumers to direct questions to health care professionals other than the prescribing physician (or other authorized prescribing practitioner) and dispensing pharmacist. In such event, the patient could receive inadequate or inappropriate advice.

5. Several comments stated that the physician package insert does not alert

the physician to the fact that patients have been instructed to consult with their physician about possible alternatives. Two comments suggested that the warning on the physician package insert contain the following additional sentence: ''The patient has been instructed to consult with you if they have questions about alternatives.''

FDA agrees with the comment and has reworded the warning in the physician package insert with language to that effect.

Another comment suggested that the proposed OTC drug product warning was unduly worrisome to consumers and that a warning similar to the alternative warning contained in patient labeling for prescription products be allowed for OTC drug products.

EPA's regulations allow an exception to the general rule of requiring the EPA warning only on patient labeling for prescription products when the EPA warning is contained in the physician labeling for the product. No similar exception is provided for OTC drug products; therefore, the warning suggested in the comment would not be in compliance with EPA regulations.

IV. Implementation Scheme

FDA advises applicants who have an approved new drug application (NDA) and whose products contain or are manufactured with CFC's or other ozone-depleting substances to use the existing procedures in 21 CFR 314.70(c) (supplements for changes that may be made before FDA approval) to notify the agency of any labeling changes to add a CFC warning statement. Applicants who have an approved abbreviated new drug application (ANDA) should follow the same procedures (see 21 CFR 314.97).

Applicants who have submitted either an NDA or ANDA but have not received approval should, if necessary, amend their applications to notify FDA about the warning statement(s) they intend to use. Applicants should submit such amendments in accordance with 21 CFR 314.60 or 314.96, whichever is appropriate.

Applicants who hold an approved product license application (PLA) and whose products contain or are manufactured with CFC's or other ozone-depleting substances are to follow the guidance offered in this interim rule. Revision of labeling to accommodate this warning statement may be implemented without preclearance from the Center for Biologics Evaluation and Research (CBER) and submitted to the file as final printed labeling provided that the placement of such information does not interfere with or render less prominent any information required by biologics labeling regulations (21 CFR 610.60 through 610.65)).

Applicants who have submitted a PLA but have not yet received approval should, if necessary, amend their applications to notify CBER about inclusion of the required warning statement(s) they intend to use. Such amendments should be submitted under the applicable reference number.

Applicants who have submitted premarket approval applications (PMA's) for medical devices but have not received approval should, if necessary, amend their applications to notify FDA about the warning statement(s) they intend to use. Applicants should submit such amendments in accordance with 21 CFR 814.37. With respect to approved PMA's, applicants should use the procedures in 21 CFR 814.39 to notify the agency of any labeling changes to add a CFC warning. Applicants who have received premarket clearance pursuant to 21 U.S.C. 360(k) (''510(k) clearance'') do not need to file a new 510(k) submission requesting new clearance if this rule only results in the addition of the warning statement to the labeling.

FDA advises applicants who have an approved new animal drug application (NADA) and whose products contain or are manufactured with CFC's or other ozone-depleting products to use the existing procedures as identified in 21 CFR 514.8(e) (supplements for changes which may be made before FDA approval) to notify the agency of any labeling changes made to add the CFC warning statement. FDA advises applicants who have submitted an NADA but have not received approval should, if necessary, amend their applications to reflect the required label warning. No notification to the agency is necessary for foods, cosmetics, or animal foods.

Manufacturers who amended their labeling to conform with the June 29, 1993, notice and who have an approved marketing application for their product should submit a supplemental application to bring their labeling into compliance with this interim rule. Such manufacturers may continue to use their current stocks of labeling that comply with the June 29, 1993, notice until those stocks are exhausted.

V. Effective Date and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing these requirements as an interim rule with an opportunity for public comment. In view of the May 15, 1993, statutory warning label requirement, the agency is issuing these requirements at this time, but FDA will consider modifications to the regulations based on issues raised during the comment period and experience gained under the interim rule.

The Administrative Procedure Act provides an exception to notice and comment rulemaking when an agency, for good cause, finds that the notice and comment procedures are impracticable, unnecessary, or contrary to the public interest (see 5 U.S.C. 553(b)(B)). For this interim rule, FDA finds that notice and comment procedures would be impracticable for a CFC warning statement requirement because the Clean Air Act requires such warning statements to be placed on products containing or manufactured with CFC's or other ozone-depleting substances by May 15, 1993.

FDA also finds that notice and comment rulemaking to be unnecessary and contrary to the public interest. The interim rule permits parties to use the EPA warning statement or an alternative FDA statement. FDA has no authority to change or modify the warning statements established in EPA's regulations, and, in this interim rule, offers, but does not require, the use of an alternative statement. Consequently, because one warning statement is established by another agency and because the alternative warning statement is optional, FDA believes that notice and comment procedures are unnecessary. Furthermore, FDA believes that, without the availability of the alternative warning statement, patients who are concerned about a medical product's impact on the environment and public health might inappropriately refrain from taking their medication. This interim rule provides an alternative warning statement that encourages patients to continue taking their medication and to consult their physicians, pharmacists, other health professionals, or, in the case of devices, their suppliers, concerning the product's effect on the environment or public health. It would, therefore, be contrary to the public interest to delay the implementation of this rule pending notice and comment rulemaking.

FDA believes, however, that it should invite and consider public comment on its practices and procedures for these CFC warning statements. Interested persons may, on or before August 1, 1996, submit to the Dockets Management Branch (address above) comments regarding this interim rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number

found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Analysis of Impacts

FDA has examined the impacts of the interim rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this interim rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the interim rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The regulatory impact analysis (RIA) (January 1993) that accompanied EPA's rule that implemented section 611 of the Clean Air Act specifically accounted for cost increases for ''medical aerosols, including metered-dose inhalation devices, contraceptive foams, topical antibiotics, and local anesthetics'' (page 15 of the RIA). A copy of this RIA is available for examination under Public Docket No. A–91–60 at the U.S. Environmental Protection Agency, rm. M–1500, Waterside Mall (Ground Floor), 401 M St. SW., Washington, DC 20460. Other FDA-regulated products are accounted for under separate industry subgroupings. The compliance costs for these labeling changes have thus been accounted for, and this interim rule adds no additional burden or cost. Thus, the agency certifies that the interim rule does not constitute a major rule as defined in Executive Order 12866. The agency further certifies that the interim rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 501

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 740

Cosmetics, Labeling.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, the Fair Packaging and Labeling Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 101, 201, 369, 501, 740, and 801 are amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.17 is amended by revising paragraph (c) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(c) *Food containing or manufactured with a chlorofluorocarbon or other ozone-depleting substance.* Labeling requirements for foods that contain or are manufactured with a chlorofluorocarbon or other ozone-depleting substance designated by the Environmental Protection Agency (EPA) are set forth in 40 CFR part 82.

* * * * *

PART 201—LABELING

3. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

4. New § 201.320 is added to subpart G to read as follows:

§ 201.320 Warning statements for drug products containing or manufactured with chlorofluorocarbons or other ozone-depleting substances.

(a)(1) All drug products containing or manufactured with chlorofluorocarbons, halons, carbon tetrachloride, methyl chloride, or any other class I substance designated by the Environmental Protection Agency (EPA) shall, except as provided in paragraph (b) or (c) of this section, bear the following warning statement:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and the environment by destroying ozone in the upper atmosphere.

(2) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase.

(b)(1) For prescription drug products for human use, the following alternative warning statement may be used:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]:

This product contains [or is manufactured with, if applicable] [*insert name of substance*], a substance which harms the environment by destroying ozone in the upper atmosphere.

Your physician has determined that this product is likely to help your personal health. USE THIS PRODUCT AS DIRECTED, UNLESS INSTRUCTED TO DO OTHERWISE BY YOUR PHYSICIAN. If you have any questions about alternatives, consult with your physician.

(2) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase.

(3) If the warning statement in paragraph (b)(1) of this section is used, the following warning statement must

be placed on the package labeling intended to be read by the physician (physician package insert) after the ''How supplied'' section, which describes special handling and storage conditions on the physician labeling:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and the environment by destroying ozone in the upper atmosphere.

A notice similar to the above WARNING has been placed in the information for the patient [or patient information leaflet, if applicable] of this product under the Environmental Protection Agency's (EPA's) regulations. The patient's warning states that the patient should consult his or her physician if there are questions about alternatives.

(c)(1) For over-the-counter drug products for human use, the following alternative warning statement may be used:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or other class I substance, if applicable]:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

CONSULT WITH YOUR PHYSICIAN OR HEALTH PROFESSIONAL IF YOU HAVE ANY QUESTION ABOUT THE USE OF THIS PRODUCT.

(2) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase.

(d) This section does not replace or relieve a person from any requirements imposed under 40 CFR part 82.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

5. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371).

§ 369.21 [Amended]

6. Section 369.21 *Drugs; warning and caution statements required by regulations* is amended in paragraph (d) in the warning section for ''DRUGS IN DISPENSERS PRESSURIZED BY GASEOUS PROPELLANTS * * *'' by removing the five undesignated paragraphs after the introductory text of paragraph (d).

PART 501—ANIMAL FOOD LABELING

7. The authority citation for 21 CFR part 501 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

8. Section 501.17 is amended by revising paragraph (c) to read as follows:

§ 501.17 Animal food labeling warning statements.

* * * * *

(c) *Animal food containing or manufactured with a chlorofluorocarbon or other ozone-depleting substance.* Labeling requirements for animal foods that contain or are manufactured with a chlorofluorocarbon or other ozone-depleting substance designated by the Environmental Protection Agency (EPA) are set forth in 40 CFR part 82.

PART 740—COSMETIC PRODUCT WARNING STATEMENTS

9. The authority citation for 21 CFR part 740 continues to read as follows:

Authority: Secs. 201, 301, 502, 505, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374).

10. Section 740.11 is amended by revising paragraph (c) to read as follows:

§ 740.11 Cosmetics in self-pressurized containers.

* * * * *

(c) Labeling requirements for cosmetics packaged in a self-pressurized container containing or manufactured with a chlorofluorocarbon propellant or other ozone-depleting substance designated by the Environmental Protection Agency (EPA) are set forth in 40 CFR part 82.

PART 801—LABELING

11. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

12. New § 801.63 is added to subpart C to read as follows:

§ 801.63 Medical devices; warning statements for devices containing or manufactured with chlorofluorocarbons and other class I ozone-depleting substances.

(a) All over-the-counter devices containing or manufactured with chlorofluorocarbons, halons, carbon tetrachloride, methyl chloride, or any other class I substance designated by the Environmental Protection Agency (EPA) shall carry one of the following warnings:

(1) The EPA warning statement:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(2) The alternative statement:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or other class I substance, if applicable]:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

CONSULT WITH YOUR PHYSICIAN, HEALTH PROFESSIONAL, OR SUPPLIER IF YOU HAVE ANY QUESTION ABOUT THE USE OF THIS PRODUCT.

(b) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase. This provision does not replace or relieve a person from any requirements imposed under 40 CFR part 82.

§ 801.425 [Removed]

13. Section 801.425 *Nonrestricted devices in self-pressurized containers with chlorofluorocarbon propellants* is removed from subpart H.

14. New § 801.433 is added to subpart H to read as follows:

§ 801.433 Warning statements for prescription and restricted device products containing or manufactured with chlorofluorocarbons or other ozone-depleting substances.

(a)(1) All prescription and restricted device products containing or manufactured with chlorofluorocarbons, halons, carbon tetrachloride, methyl chloride, or any other class I substance designated by the Environmental

Protection Agency (EPA) shall, except as provided in paragraph (b) of this section, bear the following warning statement:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(2) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase.

(b)(1) For prescription and restricted device products, the following alternative warning statement may be used:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]:

This product contains [or is manufactured with, if applicable] [*insert name of substance*], a substance which harms the environment by destroying ozone in the upper atmosphere.

Your physician has determined that this product is likely to help your personal health. USE THIS PRODUCT AS DIRECTED, UNLESS INSTRUCTED TO DO OTHERWISE BY YOUR PHYSICIAN. If you have any questions about alternatives, consult with your physician.

(2) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase.

(3) If the warning statement in paragraph (b)(1) of this section is used, the following warning statement must be placed on the package labeling intended to be read by the physician (physician package insert) after the ''How supplied'' section, which describes special handling and storage conditions on the physician labeling:

Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]:

Warning: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

A notice similar to the above WARNING has been placed in the information for the patient [or patient information leaflet, if applicable] of this product under Environmental Protection Agency (EPA) regulations. The patient's warning states that the patient should consult his or her physician if there are questions about alternatives.

(c) This section does not replace or relieve a person from any requirements imposed under 40 CFR part 82.

Dated: April 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–10961 Filed 5–2–96; 8:45 am]

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Federal Register

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May 3, 1996

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 210 and 211

Current Good Manufacturing Practice: Amendment of Certain Requirements for Finished Pharmaceuticals; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 210 and 211

[Docket No. 95N–0362]

RIN 0910–AA45

Current Good Manufacturing Practice; Proposed Amendment of Certain Requirements for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend certain requirements of the current good manufacturing practice (CGMP) regulations for finished pharmaceuticals. These amendments would clarify certain manufacturing, quality control, and documentation requirements and would ensure that the regulations more accurately encompass CGMP. In addition, the agency is updating the requirements for process and methods validation to incorporate guidance previously issued to industry and to reflect current practice. These proposed amendments are intended to enhance the integrity of the drug manufacturing process and the safety of drug products.

DATES: Submit written comments on the proposed rule by August 1, 1996. Submit written comments on the information collection requirements by June 3, 1996. FDA proposes that any final rule that may issue based upon this proposal become effective 90 days after its date of publication in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Kuchenberg, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046; or

John M. Dietrick, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0098; or

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SUPPLEMENTARY INFORMATION:

I. History of the CGMP Regulations

On October 10, 1962, Congress enacted the Drug Amendments of 1962 (Pub. L. 87–781). The amendments include section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)(2)(B)), which deems a drug to be adulterated if:

> * * * the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

In the Federal Register of June 20, 1963 (28 FR 6385), FDA published the first CGMP regulations (now codified as 21 CFR parts 210 through 226).

FDA has amended these regulations several times since 1963 to ensure that they reflect the level of control necessary and that they incorporate current technology to the extent that it influences compliance with CGMP. Major revisions of the CGMP regulations were issued in the Federal Registers of January 15, 1971 (36 FR 601), September 29, 1978 (43 FR 45014), and January 20, 1995 (60 FR 4087). The latter revision came about as the result of a comprehensive assessment of the CGMP regulations, pursuant to the Regulatory Flexibility Act (Pub. L. 96–354). During the assessment, the agency solicited comments from the public with respect to any regulations that might be perceived as being unnecessarily costly, burdensome, or lacking public benefit. The revisions that became final in January 1995 were based on the comments that FDA received as well as the agency's experience in applying those regulations.

II. Background of the Regulations

Since the development of the CGMP regulations, FDA has balanced the need for precise, easily understood standards, which ease both compliance and enforcement burdens, with the need to encourage innovation and the development of improved manufacturing technologies. The agency continues to balance such issues as part of the regulatory process, and to choose the means of regulation most suited to any particular aspect of the manufacturing process. The agency strives to provide manufacturers with the discretion on how to achieve the level of control necessary under CGMP, recognizing that in a few instances, more direction from the agency is necessary because of the potential for harm, the narrow range of acceptable means to accomplish a particular CGMP objective, or to provide a uniform standard to the entire industry. The CGMP regulations are based on fundamental concepts of quality assurance: (1) Quality, safety, and effectiveness must be designed and built

into a product; (2) quality cannot be inspected or tested into a finished product; and (3) each step of the manufacturing process must be controlled to maximize the likelihood that the finished product will be acceptable (Ref. 1).

To accomplish these objectives, the agency must periodically reassess and revise the CGMP regulations to accommodate advances in technology that further safeguard the drug manufacturing process. As technology and scientific knowledge evolve, so does understanding of the critical material, equipment, and process variables that must be defined and controlled to ensure end product homogeneity and conformity with appropriate specifications. The CGMP regulations would not achieve their statutorily mandated purposes if they were not periodically reassessed to identify and eliminate obsolete provisions or to modify provisions that no longer reflect the level of quality control that current technology dictates and that the majority of manufacturers have adopted.

Despite the agency's historic preference for a general regulatory approach in the CGMP regulations, experience has shown that additional specificity is warranted in certain areas. In addition, FDA regulatory activities, and particularly its enforcement activities, have demonstrated a need for greater uniformity in certain procedures to protect the integrity of the drug product. When experience has demonstrated that the acceptable choices with respect to any given regulation are limited, FDA believes that the regulations will better serve the public by reflecting the actual processes and procedures that are acceptable to FDA. In those relatively few instances where such specificity has been introduced into the regulations, FDA believes industry will benefit by being able to focus its resources on activities and processes that are known to be appropriate, rather than on those that may eventually be found to be deficient.

FDA has determined that revisions to the CGMP regulations are necessary at this time for a number of reasons. Rapid changes in technology have created situations not anticipated when the CGMP regulations were originally written or last revised. The agency's enforcement and litigation experience has revealed persistent lack of understanding among a limited number of manufacturers with respect to certain of the CGMP regulations. Some pharmaceutical firms have not subjected their procedures to sufficient scrutiny, while others have failed to update such procedures to accommodate changes or advances in the manufacturing process. In some cases, manufacturers may be relying on methods and procedures that were acceptable at some time in the past, but that are not acceptable in light of current standards.

In addition, FDA investigators have encountered serious validation deficiencies at a number of firms. FDA is particularly concerned with validation procedures designed to ensure the quality of the manufacturing process. Enforcement and compliance actions have also revealed a need for greater clarity and specificity in some portions of the regulations.

These proposed revisions would, therefore, amend certain requirements, define or redefine certain terms, and clarify industry obligations with respect to several portions of the regulations. In addition, the agency is proposing to revise certain laboratory control and cross-contamination requirements and to clarify proper testing procedures.

FDA believes that the procedures that would be required by this proposal reflect practices already used by many manufacturers and represent the prevailing industry standard. The agency emphasizes, however, that for a given practice to be considered a current good manufacturing practice (or promulgated as such in the regulations), it is not a prerequisite that the practice actually be in use by a majority, or a specific percentage of, the industry.

FDA has endeavored to ensure that the drug manufacturing process will consistently produce products that are safe and have the quality and purity which they purport to have, while recognizing the interests of firms in retaining some discretion in achieving the level of control necessary to comply with CGMP. FDA believes that the proposed rule successfully addresses this balance; however, FDA invites comments addressing specific proposals.

Other organizations have developed standards to define quality in the manufacturing process. One such organization is the International Organization of Standardization (ISO). The purpose of the ISO 9000 Standards is to provide generic guidance on quality in manufacturing processes to both industry and vendors supplying industry. Five standards (9000–9004) have been developed by the ISO Council and are intended to be accepted worldwide. These standards are applicable to any industry and are not specific to the pharmaceutical industry. Compliance with the standards is voluntary. The principles and practices elucidated in the ISO standards are not in conflict with those provided by the CGMP regulations. Indeed, the voluntary ISO standards share common principles with FDA's CGMP requirements.

III. Highlights of the Proposed Rule

The proposed rule would amend or revise a number of CGMP provisions as follows:

A. Process Validation

The proposed rule would define ''process validation.'' Process validation is a quality assurance function that helps to ensure drug product quality by providing documented evidence that the manufacturing process consistently does what it purports to do. Although process validation is widely practiced by industry, FDA continues to find firms that have never validated manufacturing processes for some finished products.

Manufacturing process validation is a continuous undertaking through which the process performance is constantly monitored and evaluated. The complexities of modern manufacturing processes may make it necessary to adapt or alter existing parameters while unexpected variables may affect the manufacturing process and the finished product. For example, a slight change in the physical characteristics of an ingredient, or in the order of adding ingredients, may alter the bioavailability of a drug product. In such a case, a sample of the finished product could meet compendial dissolution criteria but present a substantially different dissolution pattern than that produced before changes were made. Because of such effects, revalidation may be necessary after any change in process or product characteristics or control procedures.

Although FDA has found numerous instances in which some firms have failed to revalidate their processes for many years, the agency recognizes that most of industry establishes and follows process validation standards. Moreover, most in industry recognize the need for revalidation (Ref. 2):

> To preserve the validated status of a process, measures must be taken that will allow any significant process changes to be recognized and addressed promptly. Such change control measures can apply to equipment, standard operating procedures, manufacturing instructions, environmental conditions, or any other aspect of the process system that has an effect on its state of control, and therefore on the state of validation.

Accordingly, the agency is proposing to add new § 211.220 to the CGMP regulations specifying the nature and extent of validation that are necessary to

ensure that the resulting products have the identity, strength, quality, and purity characteristics that they purport to possess. The proposed regulation also clarifies this requirement by using the term ''validation'' for those elements of the manufacturing process under the control of the manufacturer, while the term ''verification'' is used for those items produced by a person other than the manufacturer or otherwise not under the control of the manufacturer.

FDA believes that the proposed rule reflects current industry standards and processes that are implemented by many in the industry. The proposed rule is necessary to: (1) Clarify the requirement to those firms that have not implemented or properly conducted validation; (2) ensure that all manufacturers are applying, and are evaluated against, the same standard; and (3) clarify any remaining confusion about the importance of validation in CGMP. FDA invites comments on whether this proposal adequately achieves these goals in a manner consistent with current industry practice.

B. Methods Validation

This proposed rule would also define in § 210.3 ''methods validation,'' which is the documented, successful evaluation of an analytical method that provides a high level of assurance that such method will consistently yield results that are accurate within previously established specifications. The agency is proposing to move the requirement for methods validation from § 211.165(e) to § 211.222 for emphasis and to change the word ''established'' to ''validated'' for clarification. Current regulations require regulated firms to validate all analytical methods that vary from compendial methods. The suitability of a chosen method may be measured by such analytical variables as precision, accuracy, limit of detection, limit of quantitation, selectivity, range, linearity, and ruggedness. Methods validation is intended to provide a high level of confidence that the method selected is scientifically sound and that it serves its intended analytical purpose.

Methods validation is central to ensuring the reliability of all evidence that supports a product's identity, strength, quality, and purity. For test results to be useful, significant, and reliable, the methods used to analyze the data in such test results must also be validated. In other words, a firm must establish that the analytical methods it uses to assess or evaluate a manufacturing process accurately measure variables affecting process control.

FDA recognizes that the scientific soundness of most of the methods used by firms is well established. Compendial methods, for example, reflect years of experience and evaluation and, in most cases, do not need to be revalidated. In some instances, however, no generally recognized analytical method exists or problems may develop with existing methods. Product modification may also lead to innovative analytical methods. FDA inspections have revealed that some firms use methods that have become outdated, or claim to use analytical methods that bear little relationship to those actually being used. In such cases, new or revised analytical methods must be established as scientifically sound and reproducible. FDA invites comments on this proposal with respect to alternative means, if any, of assuring the reliability of analytical methods.

C. Contamination

Drug products can become contaminated in a variety of ways. For example, ineffective cleaning procedures may leave residues of the product or cleaning agents in the equipment, production workers may fail to take proper precautions while transporting a substance from one area to another thereby introducing a contaminant to the second production area, or particles may become airborne and travel to production areas throughout the facility. Drug products may become contaminated by a number of substances such as dust, dirt, debris, toxic substances, infectious agents, or residue of other drugs or drug components. Most contamination can be controlled to an acceptable level through measures such as proper planning and implementation of cleaning processes, employee training, gowning, and air filtration. Under CGMP, a manufacturer will set contamination limits on a substance-by-substance basis, according to both the potency of the substance and the overall level of sensitivity to that substance.

However, controlling or reducing the likelihood of contamination is inadequate when substances are present that may pose a serious risk to humans or animals because their presence in even trace amounts may render toxic an otherwise safe product. This is of particular concern because a toxic reaction resulting from cross-contamination may not be apparent to a health professional treating a patient suffering from such a reaction, or may be impossible to trace to product contamination. Penicillin, for example, is a substance that poses an unacceptable risk of contamination because of the severe reaction some humans have to it even at very low levels of exposure. Penicillin has long been subject to specific CGMP regulations designed to reduce the danger of cross-contamination. Because other substances, such as cytotoxic agents or other antibiotics, pose at least as great a risk of toxicity due to cross-contamination, FDA is proposing to expand the contamination control requirements to encompass other sources of contamination.

FDA has determined that substances posing a serious threat of contamination, i.e., substances to which humans or animals show a particular sensitivity even at extremely low levels, should be controlled through dedicated production processes. For example, dedicated facilities, air-handling equipment, and process equipment may be necessary. The agency has refrained from establishing a list of drugs or drug products that present such an unacceptable risk, because such a list would quickly become obsolete. Moreover, the agency believes that most manufacturers are knowledgeable about risks that are associated with products that they produce, as well as with the effective means to prevent cross-contamination. FDA stresses that prevention of cross-contamination of potentially toxic substances is the goal of this proposed rule. Because, in even small amounts, those drugs may be toxic to humans or animals, FDA expects manufacturers to identify any drugs that they produce that present the risk of cross-contamination and to implement measures necessary to eliminate that risk. FDA recognizes that, depending on the drug product, a variety of measures may be acceptable to eliminate cross-contamination; there may, however, be situations in which nothing short of dedicated facilities or equipment will be sufficient. FDA invites comments on this proposal especially with respect to any alternative means of addressing and preventing cross-contamination.

D. Testing

FDA has concluded through its inspection and enforcement activities that many manufacturers are not conducting adequate testing procedures and are not adequately evaluating test discrepancies or investigating failures. Such an investigation is crucial to ensure that the manufacturing process is adequately controlled.

FDA recognizes the need to clarify the CGMP requirements in this area so that all manufacturers are applying the same

minimum standards and so that all manufacturers are thoroughly assessing test results and discrepancies to ensure that all drug products are safe and of the quality and purity which they purport to be. This proposed rule would amend procedures for the testing of components, calculation of yield, and blend testing. It would also provide procedures for dealing with out-of-specification results. FDA invites comments on alternate means of achieving adequate followup of testing discrepancies or failures.

E. Quality Control

To further ensure that validation procedures are current, this proposed rule would make the quality control unit responsible for reviewing changes in product, process, equipment, or personnel, and for determining if and when revalidation is required. The agency believes that placing responsibility for oversight of validation procedures in quality control units emphasizes the importance of proper validation to quality control. This proposed rule stresses the importance of validation by ensuring that a manufacturer will have a certain employee or employees who are responsible for and accountable for ensuring that the firm adequately evaluates its manufacturing process, validates the processes and testing that must be validated, and thoroughly assesses any discrepancies. FDA believes that this proposed regulation will enhance compliance with CGMP through a means acceptable to most manufacturers while providing FDA the ability to ensure accountability and compliance.

IV. Description of the Proposed Rule

In general, the proposed rule would add new definitions to § 210.3 to clarify existing terms in the CGMP regulations and to reflect proposed changes to the CGMP regulations for finished pharmaceuticals. This proposal would also revise the CGMP regulations for finished pharmaceuticals in part 211 to incorporate validation, test, and documentation procedures necessary to protect the integrity of the drug manufacturing process. Specific provisions are described in more detail below.

A. Section 210.3—Definitions

Current § 210.3(b) defines various terms that are used in the CGMP regulations in parts 210 to 226.

This proposed rule would amend § 210.3(b) to include new definitions to clarify existing terminology and to define new terms introduced in other provisions of this proposal. Under proposed § 210.3(b)(23), ''validation protocol'' would mean a written plan describing the process to be validated, including production equipment and how validation will be conducted. Such a plan would address objective test parameters, product and process characteristics, predetermined specifications, and factors which will determine acceptable results.

Proposed § 210.3(b)(24) would define ''process validation'' as establishing, through documented evidence, a high degree of assurance that a specific process will consistently produce a product that meets its predetermined specifications and quality characteristics.

This proposal would define ''methods validation'' in § 210.3(b)(25) as establishing, through documented evidence, a high degree of assurance that an analytical method will consistently yield results that accurately reflect the quality characteristics of the product tested.

Proposed § 210.3(b)(26) would define ''equipment suitability'' as the established capacity of process equipment and ancillary systems to operate consistently within established limits and tolerances.

Under proposed § 210.3(b)(27), ''process suitability'' would mean the established capacity of the manufacturing process to produce effective and reproducible results consistently.

Proposed § 210.3(b)(28) would define ''out-of-specification'' as an examination, measurement, or test result that does not comply with preestablished criteria. This definition would be consistent with § 211.160(b), which requires laboratory controls for finished pharmaceuticals to include the establishment of scientifically sound and applicable specifications, standards, sampling plans, and test procedures designed to ensure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity.

Proposed § 210.3(b)(29) would define ''reprocessing'' as a system of reworking batches that do not conform to standards or specifications, including ''the steps taken to ensure that the reprocessed batches will conform to all established standards, specifications, and characteristics.'' Under the proposal, ''reprocessing'' would include a step or steps in the manufacturing process that are out of the normal processing sequence or that are not specifically provided for in the process.

Under proposed § 210.3(b)(30), ''manufacturing process'' would mean all manufacturing and storage steps in the creation of the finished product from the weighing of components through the storing, packaging, and labeling of the finished product, including, but not limited to, the following: Mixing, granulating, milling, molding, formulating, lyophilizing, tableting, encapsulating, coating, sterilizing, and filling.

B. Section 211.22—Responsibilities of Quality Control Unit

Current § 211.22 describes a quality control unit's responsibilities. These responsibilities include ''the responsibility and authority to approve or reject all components, drug product containers, closures, in-process materials, packaging material, labeling, and drug products'' as well as the authority to review production records to determine whether errors have occurred. If errors have occurred, § 211.22 also gives quality control units the authority to determine whether a firm has fully investigated the error.

The agency understands that some manufacturers would prefer that the term ''quality control'' be replaced with ''quality assurance,'' that the functions of quality control and quality assurance be somehow differentiated, or that a number of other terms be incorporated into the regulation to reflect the distribution of quality oversight responsibilities in various manufacturing settings.

FDA does not believe that such changes in terminology would be useful. The difference between ''quality assurance'' and ''quality control'' is recognized to be operational. The quality control unit is usually responsible for performing the testing to assure that proper specifications and limits are adhered to, while the quality assurance unit is responsible for auditing methods, results, systems, and processes, and for performing trend analyses. The functions described in the proposed rule as the responsibility of the quality control unit are designed to be implemented by all manufacturers, regardless of size or organizational structure. However, such procedures can easily be accommodated under organizational structures which utilize quality assurance and quality control departments. The agency stated in the preamble to the 1978 CGMP regulation and reiterates here, that the term quality control ''unit'' is used in the regulations ''because it is a term broadly applicable to any group within a manufacturing establishment charged with the responsibility of quality control. The

Commissioner is not concerned about the name given by a firm to its own unit that is responsible for quality control functions'' (43 FR 45014 at 45032).

Proposed 211.22(a) would require that firms be accountable with respect to validation provisions and would give quality control units the additional responsibility of reviewing and approving validation protocols to assess their adequacy. Quality control units would also be responsible for reviewing product, process, equipment, or other changes to determine if and when revalidation is warranted. This change is intended to make the quality control unit responsible for keeping validation current and is a logical extension of the quality control unit's role in ensuring product quality. The agency believes that, by making clear such accountability, compliance with the validation provisions will be more consistent and reliable.

C. Section 211.68—Automatic, Mechanical, and Electronic Equipment

Current § 211.68(b) requires appropriate controls over computer or related systems to ensure that only authorized personnel make changes in master production and control records or other records. The current regulation also requires that ''A backup file of data entered into the computer or related system shall be maintained except where certain data, such as calculations performed in connection with laboratory analysis, are eliminated by computerization or other automated processes.'' If computerization or other automated process has eliminated such calculations, ''a written record of the program shall be maintained along with appropriate validation data.''

Proposed § 211.68(b) would replace the phrase ''appropriate validation data'' with ''data establishing proper performance.'' This change is intended to emphasize that the manufacturer must actually establish proper performance.

D. Section 211.82—Receipt and Storage of Untested Components, Drug Product Containers, and Closures

Section 211.82 governs the receipt and storage of untested components, drug product containers, and closures. Section 211.82(b) currently states, in part, that, ''Components, drug product containers, and closures shall be stored under quarantine until they have been tested or examined, as appropriate, and released.'' This provision is designed to prevent the premature release of untested components, containers, and closures that might be unsuitable for use in the manufacturing process.

The proposal would remove the words, ''as appropriate,'' to eliminate any ambiguity in the existing regulation. Although testing or examination may vary with the particular component, drug product container, or closure, the revision would also emphasize that it is, in fact, accepted industry practice to conduct some testing or examination before the components, drug product containers, or closures are released from quarantine.

E. Section 211.84—Testing and Approval or Rejection of Components, Drug Product Containers, and Closures

Section 211.84 pertains to the testing and approval or rejection of components, drug product containers, and closures. Under current § 211.84(c)(1), containers of components ''shall be cleaned where necessary, by appropriate means.''

This proposed rule would replace the phrases ''where necessary'' and ''by appropriate means'' with ''in a manner to prevent introduction of contaminants into the raw material.'' This change will clarify that the act of cleaning component containers is done for a particular purpose, to prevent the introduction of contaminants, and that purpose must, in all cases, be achieved.

FDA proposes to correct a typographical error in the text of § 211.84(c)(5) which requires that sample containers be identified so that, among other things, the date on which the sample was taken can be determined. The current regulation erroneously states ''the data on which the sample was taken.'' FDA proposes to correct this by changing ''data'' to ''date.'' Additionally, proposed § 211.84(d)(3) would make two editorial changes by replacing the word ''conformance'' with ''conformity'' and ''procedure'' with ''specifications.''

F. Section 211.101—Charge-In of Components

Current § 211.101 requires written production and control procedures to assure that drug products have the identity, strength, quality, and purity they purport or are represented to possess. Section 211.101(c) requires that weighing, measuring, or subdividing operations be adequately supervised and that each container of component dispensed to manufacturing be examined by a second person to ensure that: (1) The component was released by the quality control unit; (2) the weight or measure, as stated in batch production records, is correct; and (3) the containers are properly identified.

The proposed rule would add a fourth requirement (§ 211.101(c)(4)) that drug ingredients conform to the quality specifications for the intended drug product. Active and inactive ingredients come in varying grades and may not be interchangeable. This proposal would require examination of the component by competent and responsible individuals to ensure that the correct material is used. This provision would provide additional assurance that the raw materials used are appropriate for the intended batch, but is not intended to require testing in addition to that required under subpart E of part 211.

G. Section 211.103—Calculation of Yield

Section 211.100 currently requires maintenance of written procedures for production and process controls to ensure that drug products have the identity, strength, quality, and purity they purport or are represented to possess. Section 211.103 currently requires that actual yields and percentages of theoretical yield be determined at the conclusion of appropriate phases of manufacturing, processing, packaging, or holding of the drug product. These calculations are performed by one person and independently verified by a second person. Section 211.192 currently requires any unexplained discrepancy (including a percentage of theoretical yield exceeding the maximum or minimum percentages established in master production and control records) to be thoroughly investigated.

This proposed rule would amend § 211.103 to make clear that there must be a written production and control procedure that will require an investigation of any significant unexplained discrepancies between actual yields and percentages of theoretical yield of the drug product. This provision would help ensure that the source of any potential problem is quickly and accurately identified and addressed.

H. Section 211.110—Sampling and Testing of In-Process Materials and Drug Products

Current § 211.110 establishes several requirements for the sampling and testing of in-process materials and drug products. For example, § 211.110(a) requires written procedures for in-process controls and tests or examinations to be conducted on appropriate samples of in-process materials of each batch, whereas § 211.110(b) states that valid in-process specifications shall be consistent with drug product final specifications and shall be derived from previous acceptable process average and process

variability estimates where possible and determined by the application of suitable statistical procedures. The regulation is designed to protect the integrity of the manufacturing process and thus the safety and efficacy of the drug product.

Sampling and testing techniques, however, are valid only insofar as they provide a realistic representation of the material being sampled or tested. Blend testing is important because it increases the likelihood of quickly detecting uniformity problems that may produce inferior batches. A large sample can mask differences that may be significant in individual dosage units. Therefore, sample size must approximate dosage size to provide an accurate representation of blend uniformity. This proposal would create new § 211.110(d) to help ensure adequate testing. (The current paragraph (d) would be redesignated as paragraph (e).) Proposed § 211.110(d) would also require that sampling be demonstrated through validation to be representative of all portions of the blend.

This proposal would also require in new § 211.110(f) that validation of manufacturing processes be conducted in accordance with process validation requirements in proposed § 211.220. Validation of these processes is intended, among other things, to ensure that the sample is representative of all portions of the blend. For example, firms sampling from drums containing the finished blend must demonstrate that their sampling technique produces samples representative of the entire batch.

I. Section 211.111—Time Limitations on Production

To assure the quality of the drug product, § 211.111 currently requires, when appropriate, time limits for the completion of each phase of production.

This proposed rule would revise § 211.111 to require for time-sensitive procedures that manufacturers establish and validate maximum time for completion of such procedures as part of the validation required under § 211.220. FDA expects that the validation of time-sensitive procedures will be part of process validation.

J. Section 211.113—Control of Microbiological Contamination

Section 211.113(b) requires the establishment of, and adherence to, written procedures designed to prevent microbiological contamination of drug products purporting to be sterile. The provision also requires that such procedures include ''validation of any sterilization process.''

This proposed rule would amend § 211.113(b) to refer to validation of ''any sterilization or aseptic process.'' This change is intended to reflect the fact that whether pharmaceutical firms use aseptic processing techniques or whether they use terminal sterilization, either technique must be validated.

K. Section 211.160—General Requirements

Currently, § 211.160(b) requires that laboratory controls include the establishment of scientifically sound and appropriate specifications, standards, sampling plans, and test procedures designed to ensure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity.

This proposal would specify a requirement for the establishment of scientifically sound resampling, retesting, and data interpretation procedures.

Currently under § 211.160(b)(1), laboratory controls shall include a determination of conformance to appropriate written specifications for the acceptance of each lot within each shipment of components, drug product containers, closures, and labeling used in the manufacture, processing, packing, or holding of drug products.

This proposal would make editorial changes, replacing ''conformance'' with ''conformity'' and ''appropriate'' with ''applicable.''

L. Section 211.165—Testing and Release for Distribution

Section 211.165(e) requires that the accuracy, sensitivity, specificity, and reproducibility of test methods used by a firm be established and documented. Because other revisions in this proposal would clarify and set forth this requirement, the proposal would remove § 211.165(e) and redesignate paragraph (f) as paragraph (e).

M. Section 211.166—Stability Testing

Currently, § 211.166 requires a written stability testing program and provides the elements of such a program. The current provision requires that an adequate number of batches be tested to determine an appropriate expiration date. This proposal would redesignate current § 211.166(c) and (d) as § 211.166(d) and (e), and add new § 211.166(c) to require placing at least one additional batch into the stability testing program each year.

For some time, requirements for new drug and abbreviated new drug applications and biological products applications have included as a condition for approval a commitment to place the initial three production batches and at least one additional batch annually into the stability testing program. It is necessary to place the three initial batches in the stability testing program to account for batch variability and to confirm the previously established expiration date.

There are, however, variations in the production process during the lifetime of a drug product such as changes in personnel, raw materials and suppliers, manufacturing environment, and equipment. Because a dosage form is typically a complex unit, such changes may have an impact on drug product stability. Because of this, the agency believes it is imperative that ongoing production be periodically monitored to ensure the stability of the product. The agency believes, further, that the necessity for continued stability testing is recognized by the industry and is now standard industry practice. The agency invites comments on this proposed provision.

N. Section 211.180—General Requirements

Section 211.180(a) requires the retention of production, control, or distribution records specifically associated with a batch of a drug product, for at least 1 year after the expiration date of the batch. FDA believes that validation records, including the validation protocol, production and control records, data, and the study report, should not be discarded after the validation batches expire. They should be retained for as long as the validated process is used and as long as any batches made by the validated process may be available to consumers. The proposal would therefore amend this section to add a requirement that the validation records required by proposed new § 211.220 also be retained for at least 1 year after the expiration date of all batches associated with that validated process.

O. Section 211.192—Production Record Review

FDA's experience has revealed a variety of written and unwritten practices and procedures under which firms have disregarded out-of-specification laboratory results, after minimal retesting, resampling, inappropriate averaging of results, or inappropriate outlier testing. Some firms then proceeded to release a product without a thorough investigation or an adequate justification for disregarding an out-of-specification result.

Out-of-specification results can be caused by laboratory error, nonprocess or operator error, or by process-related error. The agency recognizes that laboratory errors occur and that a thorough investigation, supported by evidence and documentation, may, for instance, indicate an out-of-specification result caused by laboratory personnel errors or equipment failures. However, unless and until an investigation indicates that this is the case and the investigation is completed and documented, FDA believes that the out-of-specification result should not be discarded or disregarded. Moreover, FDA emphasizes that, although retesting may be an appropriate part of an investigation, an investigation consisting solely of repeated retesting is clearly inadequate. If quality is not built into a drug product, retesting cannot make it conform to specifications.

FDA recognizes the distinction between the limited investigation that may be necessary to identify a laboratory error and the more extensive investigation and testing necessary when out-of-specification results may be attributed to another cause. The agency also recognizes that the industry may impose additional criteria beyond those required to ensure identity, strength, quality, and purity under CGMP regulations or as required by a drug application. The agency encourages such internal controls. Under such circumstances, a manufacturer could have test results that violate internal standards although they would not be out-of-specification, as defined in these regulations.

FDA believes, however, that CGMP requires written procedures to be in place to determine the cause of any apparent failure, discrepancy, or out-of-specification result. If the out-of-specification result cannot be clearly attributed to laboratory error, then the quality control unit should ensure that a thorough investigation is conducted and supported by a written record. Certain elements and procedures are crucial to a systematic and orderly investigation. Consequently, this proposed rule would revise the section heading of § 211.192 to read ''Production, control, and laboratory record review and investigation of discrepancies,'' and would amend § 211.192(b) to require written procedures including the following: (1) Procedures for attempting to identify the cause of the failure or discrepancy; (2) criteria for determining whether out-of-specification results were caused by sampling or laboratory error; (3) scientifically sound procedures and criteria for the exclusion of any test data found to be invalid due to laboratory or sampling error; (4) scientifically sound procedures and criteria for additional sampling and testing, if necessary, during the investigation; (5) procedures and criteria for extending the investigation to other batches or other products; (6) procedures for review and evaluation of the investigation, including all test results, by the quality control unit, to ensure a thorough investigation; and (7) criteria for final approval or rejection of the batch involved, and for taking action on other batches and products if indicated by the investigation.

The number of retests performed before a firm concludes that an unexplained out-of-specification laboratory result is invalid, or that a product is unacceptable, is a matter of scientific judgment. FDA does not intend to issue regulations on specific retesting procedures. Rather, the proposed rule would require each firm to have written investigation and retesting procedures, applying scientifically sound criteria, that limit the amount of retesting permitted and indicate the point at which testing ends and the product is evaluated.

Proposed § 211.192(c) would require written records of the investigation to be made and shall include: (1) The reason for the investigation; (2) a description of the investigation made, including all laboratory tests; (3) the results of the investigation including all laboratory test results involved in the investigation; (4) scientifically sound and appropriate justification for excluding any out-of-specification laboratory result found to be invalid; (5) if laboratory results are found to be invalid, the subsequent laboratory results supporting the final determination of the tested item's conformity to appropriate specifications for acceptance; (6) the conclusions and subsequent actions concerning all batches and products that may have been associated with the failure or discrepancy; (7) the signature(s) and date(s) of the person(s) responsible for approving the record of the investigation; and (8) the signature(s) and date(s) of the person(s) responsible for the final decision on disposition of the batch, and on other batches and products involved. The agency specifically invites comments on these proposed requirements.

P. Section 211.220—Process Validation, and Section 211.222—Methods Validation

FDA proposes to add new subpart L to part 211 entitled ''Validation.'' The new subpart would consist of two regulations: § 211.220 for ''process validation'' (establishing through documented evidence a high degree of assurance that a specific process will consistently produce a product that meets predetermined specifications and quality characteristics), and § 211.222 for ''methods validation'' (establishing through documented evidence a high degree of assurance that an analytical method will consistently yield results that accurately reflect the quality characteristics of the material tested).

These proposed regulations are intended to clarify the requirements for validation and to provide the basic elements of an acceptable validation procedure. FDA believes, in general, that scientific knowledge and industry experience have defined the basic elements of a sound validation system. Validation has proven to be an effective technique for protecting the integrity of the drug manufacturing process.

Although the particular requirements of process validation will vary according to such factors as the nature of the drug product (e.g., sterile versus nonsterile) and the complexity of the process, the requirements of the proposed subpart are generally applicable to all drug products and provide a foundation for building a comprehensive approach to process validation.

Proposed § 211.220(a) would require validation of all drug manufacturing processes including, but not limited to, computerized systems involved in the manufacturing process. Under the proposal, the manufacturing process would include all manufacturing steps in the creation of the finished product, including, but not limited to, cleaning, weighing, measuring, mixing, blending, compressing, filling, packaging, and labeling. Time-sensitive steps in the manufacturing process would be validated. Such validation ensures that the impact of any interruption in the manufacturing process on drug product safety and efficacy is fully understood by the manufacturer.

Proposed § 211.220(b) would establish requirements for a validation protocol. The validation protocol is the blueprint of the validation process for a particular drug product. The protocol would specify a sufficient number of replicate process runs to demonstrate reproducibility and provide an accurate measure of variability among successive runs. Validation documentation would include evidence of the suitability of materials and the proper performance and reliability of the equipment and systems used to manufacture a drug product. The execution of the protocol and the test results would be

documented and the manufacturer would be required to retain such documentation.

Proposed § 211.220 would require that equipment and processes be designed and selected to be consistently capable of achieving product specifications. Determining equipment suitability would include testing to verify whether the equipment is capable of performing adequately within the operating limits of the process. A determination of process suitability would include rigorous testing and documentation to demonstrate that the process is both effective and reproducible. A manufacturer should test those parts of the process that may affect product quality or may cause variability.

Proposed § 211.220(d) would require a quality assurance system to implement revalidation procedures whenever there are changes, including reprocessing, that could affect product effectiveness or product characteristics, or whenever changes are observed in product characteristics.

Proposed § 211.222, ''methods validation,'' would require the manufacturer to establish and document the accuracy, sensitivity, specificity, reproducibility, and any other attribute necessary to validate test methods. The validation would be required to meet the existing requirements for laboratory records provided at § 211.194(a)(2). These requirements include a ''statement of each method used in the testing of the sample,'' indicating the location of the data that establish that the methods used in testing the sample meet proper standards of accuracy and reliability as applied to the tested product. The proposed provision is designed to ensure that testing methods used are relevant to product quality and the integrity of the manufacturing process. FDA invites comments on this proposal, especially on alternative means, if any, of assuring the reliability of manufacturing processes and analytical methods.

Q. Section 211.240—Control of Chemical and Physical Contaminants

FDA's experience indicates that the potential dangers of contamination are more extensive and varied than once believed; for example, high potency drugs, such as penicillin, cephalosporins, and cytotoxic anticancer agents, may pose health risks even at low levels of exposure. Cross-contamination may result in the adulteration of other drugs, and even minimal amounts could have serious adverse effects on persons who are allergic to the contaminant. Moreover, because the identity or even the presence of the contaminant may be unknown, health care professionals providing care to a patient suffering from such an adverse effect may be unable to provide appropriate medical intervention.

FDA is thus proposing to add new subpart M, which would be directed to the control of chemical and physical contaminants. The new subpart, consisting of proposed § 211.240, would require firms to anticipate and prevent specific contamination problems, including, but not limited to, those presented by penicillin. As a result, FDA is also proposing to remove §§ 211.42(d) and 211.176 regarding separate facilities for manufacturing penicillin and penicillin contamination and to incorporate their requirements in § 211.240.

Proposed § 211.240(a) would require the implementation of written procedures designed to prevent objectionable chemical and physical contamination, including cross-contamination. Section 211.240(b) would require dedicated production, which may include facilities, air handling, or process equipment, in those circumstances in which contaminants pose a special danger to human or animal health. Such contaminants include, but are not limited to, penicillin, cephalosporins, cytotoxic anti-cancer agents, and infectious agents (e.g., spore-bearing organisms and live viruses). Dedicated production would also be required under proposed § 211.240(b) if there are no reasonable methods for the cleaning and removal of a drug substance or compound residues from buildings, facilities, and equipment.

If there is a reasonable possibility that a drug has been exposed to cross-contamination, proposed § 211.240(c) would require that the product be tested for the potential contaminant. It would also require the establishment of limits for potential contaminants, and prohibit the release of a product for distribution if these limits are exceeded.

The proposed contamination provisions are designed to accommodate technological changes. For example, under the proposed rule, a manufacturer might develop a drug product of high therapeutic potential that also poses a high risk of contamination. If this hypothetical drug product contamination posed a special danger to human health, dedicated facilities would be required. If, however, experience demonstrated that the drug product did not pose such a risk, or if changes in manufacturing technology greatly reduced the risk, dedicated facilities might no longer be required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Current Good Manufacturing Practice; Proposed Amendment of Certain Requirements for Finished Pharmaceuticals.

Description: FDA is proposing to amend its CGMP regulations to establish procedures and specifications for testing, sampling, and other quality control activities; to establish criteria for initiating and performing out-of-specification investigations; and to control chemical and physical contaminants. These amendments would clarify certain manufacturing, quality control, and documentation requirements and ensure that the regulations more accurately encompass CGMP. In addition, the agency is updating the requirements for process and methods validation to incorporate guidance previously issued to industry and to reflect current practice. These proposed changes are intended to enhance the integrity of the drug manufacturing process and the safety of drug products. The total recordkeeping requirements are estimated at 89,884 hours, as a one-time reporting burden.

Description of Respondents: Businesses or other for profit and small businesses or organizations.

Estimated Reporting Burden[1]					
CFR Section	Number of Respondents	Responses per Respondent	Total Annual Responses	Hours Per Response	Total Hours
211.160(b) and (b)(1)	1,077	1	1	8.2	8,871
211.192(a)	4,184	1	1	6.7	28,060
211.192(b)	4,184	1	1	9.6	40,156
211.240	2,205	1	1	6.3	12,797
Total					89,884

[1] Because some of the numbers underlying these estimates have been rounded, figures in this table are approximate. There are no maintenance and operation costs nor start up and capital costs. The chart represents a one time burden.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of this proposed rule to OMB for its review of these previously approved information collection requirements. The agency solicits comments on the information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm. 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for FDA.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The detailed data for the cost analysis were developed by Eastern Research Group, Inc., under contract to FDA, and their full report is on file at the Dockets Management Branch (address above).

The proposed changes to the CGMP regulations will affect manufacturers of finished human and veterinary pharmaceuticals, including medical gases, and repackers and relabelers of drug products. The majority of the proposed changes clarify existing manufacturing, quality control, and documentation requirements and represent current industry practice for the majority of firms. As such, they will have little or no economic impact on the majority of the industry. Some firms are not, however, operating in conformance with CGMP and the estimates represent the agency's best assessment of the incremental increase in costs that these firms would incur in implementing full compliance with the proposed changes.

The total cost is estimated to be a one-time expenditure of $2,900,000 ($0.7 million annualized over 5 years at a 7 percent discount rate). These costs would be generated by proposed changes that would require some manufacturers to revise existing, or develop new, standard operating procedures.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact on small entities. Because this regulation will not impose significant new costs on a large number of drug manufacturing operations, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The agency estimates that, to comply with the proposal, establishments will incur additional annualized costs ranging from approximately $60 to $450 for establishments with fewer than 100 employees and from approximately $175 to $600 for establishments with 250 or more employees. For individual establishments, the impact of the proposal will depend on numerous factors, such as the type of establishment, the level of current conformance with the proposed changes, and the number and nature of products produced. Provisions of this proposal represent the most cost-effective option evaluated. Several of the rejected alternatives considered (such as revisions to § 211.84(d)(2) and (d)(3)) would have increased total costs by $14 to $27 million.

As a result of its analysis, FDA has determined that the proposed revision to the CGMP regulations for human and veterinary pharmaceuticals is not a significant regulatory action as defined by Executive Order 12866, and that the proposal will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 90 days after the date of its publication in the Federal Register.

IX. Request For Comments

Interested persons may, on or before August 1, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a. m. and 4 p.m., Monday through Friday.

X. References

The following references, which have been consulted in the drafting of this proposed rule, are readily and publicly available in a variety of locations. They have also been placed on display in the Dockets Management Branch (address

above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Juran, *Quality Control Handbook*, 4th ed., McGraw-Hill, 1988.

2. Pharmaceutical Manufacturers Association's (now known as Pharmaceutical Research and Manufacturers of America) Validation Advisory Committee, ''Process validation concepts for drug products,'' *Pharmaceutical Technology*, September 1985, p. 82.

List of Subjects

21 CFR Part 210

Drugs, Packaging and containers.

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 210 and 211 be amended as follows.

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

1. The authority citation for 21 CFR part 210 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

2. Section 210.3 is amended by adding new paragraphs (b)(23) through (b)(30) to read as follows:

§ 210.3 Definitions.

* * * * *

(b) * * *

(23) *Validation protocol* means a written plan describing the process to be validated, including production equipment, and how validation will be conducted, including objective test parameters, product and/or process characteristics, predetermined specifications, and factors which will determine acceptable results.

(24) *Process validation* means establishing, through documented evidence, a high degree of assurance that a specific process will consistently produce a product that meets its predetermined specifications and quality characteristics.

(25) *Methods validation* means establishing, through documented evidence, a high degree of assurance that an analytical method will consistently yield results that accurately reflect the quality characteristics of the product tested.

(26) *Equipment suitability* is the established capacity of process equipment and ancillary systems to operate consistently within established limits and tolerances.

(27) *Process suitability* is the established capacity of the manufacturing process to produce effective and reproducible results consistently.

(28) *Out-of-specification* means an examination, measurement, or test result that does not comply with preestablished criteria, as required by § 211.160(b) of this chapter.

(29) *Reprocessing* is a system of reworking batches that do not conform to standards or specifications. It includes the steps taken to ensure that the reprocessed batches will conform to all established standards, specifications, and characteristics. It includes a step or steps in the manufacturing process that are out of the normal processing sequence or that are not specifically provided for in the process.

(30) *Manufacturing process* means manufacturing and storage steps in the creation of the finished product from the weighing of components through the storing, packaging, and labeling of the finished product. Such steps include, but are not limited to, the following: Mixing, granulating, milling, molding, formulating, lyophilizing, tableting, encapsulating, coating, sterilizing, and filling.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

3. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

4. Section 211.22 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 211.22 Responsibilities of quality control unit.

(a) * * * The quality control unit shall be responsible for the review and approval of validation protocols and for the review of changes in product, process, equipment, or other changes to determine if and when revalidation is warranted.

* * * * *

§ 211.42 [Amended]

5. Section 211.42 *Design and construction features* is amended by removing paragraph (d).

6. Section 211.68 is amended by revising the fifth sentence in paragraph (b) to read as follows:

§ 211.68 Automatic, mechanical, and electronic equipment.

* * * * *

(b) * * * In such instances, a written record of the program shall be maintained along with data establishing proper performance. * * *

7. Section 211.82 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 211.82 Receipt and storage of untested components, drug product containers, and closures.

* * * * *

(b) Components, drug product containers, and closures shall be stored under quarantine until they have been tested or examined and released. * * *

8. Section 211.84 is amended by revising paragraph (c)(1), by removing in paragraph (c)(5) the word ''data'' and adding in its place the word ''date'', and by removing in the first sentence of paragraph (d)(3) the word ''conformance'' and adding in its place the word ''conformity'' and removing the word ''procedures'' and adding in its place the word ''specifications'' to read as follows:

§ 211.84 Testing and approval or rejection of components, drug product containers, and closures.

* * * * *

(c) * * *

(1) The containers of components selected shall be cleaned in a manner to prevent introduction of contaminants into the raw material.

* * * * *

9. Section 211.101 is amended by revising paragraph (c)(3) and by adding new paragraph (c)(4) to read as follows:

§ 211.101 Charge-in of components.

* * * * *

(c) * * *

(3) The containers are properly identified; and

(4) The components conform to the quality specifications for the intended drug product.

* * * * *

10. Section 211.103 is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 211.103 Calculation of yield.

* * * There shall also be a written production and control procedure for investigating any discrepancies in yield outside the maximum or minimum percentages established in master production and control records.

11. Section 211.110 is amended by redesignating paragraph (d) as paragraph (e) and by adding new paragraphs (d) and (f) to read as follows:

§ 211.110 Sampling and testing of in-process materials and drug products.

* * * * *

(d) When blend uniformity testing is needed to determine blend homogeneity, the sample size in both validation and ordinary production batches should approximate the dosage size. Sampling shall be demonstrated through validation to be representative of all portions of the blend.

* * * * *

(f) Validation of manufacturing processes required by this section shall be conducted in accordance with § 211.220.

12. Section 211.111 is amended by revising the first sentence to read as follows:

§ 211.111 Time limitations on production.

When appropriate, the manufacturer shall establish and validate maximum time limits for each phase of production as part of validation procedures required under § 211.220. * * *

13. Section 211.113 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 211.113 Control of microbiological contamination.

* * * * *

(b)* * * Such procedures shall include validation of any sterilization or aseptic process.

14. Section 211.160 is amended by revising the first sentence in the introductory text of paragraph (b) and the first sentence in paragraph (b)(1) to read as follows:

§ 211.160 General requirements.

* * * * *

(b) Laboratory control shall include the establishment of scientifically sound and applicable written specifications, standards, sampling plans, and test procedures including resampling, retesting, and data interpretation procedures designed to ensure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity. * * *

(1) Determination of conformity to applicable written specifications for the acceptance of each lot within each shipment of components, drug product containers, closures, and labeling used in the manufacture, processing, packing, or holding of drug products. * * *

* * * * *

§ 211.165 [Amended]

15. Section 211.165 *Testing and release for distribution* is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

16. Section 211.166 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding new paragraph (c) to read as follows:

§ 211.166 Stability testing.

* * * * *

(c) After the expiration date has been determined, there shall be an ongoing testing program for each drug product to ensure product stability. At least one batch of each drug product shall be added to the stability program annually.

* * * * *

§ 211.176 [Removed]

17. Section 211.176 *Penicillin contamination* is removed.

18. Section 211.180 is amended by revising paragraph (a) to read as follows:

§ 211.180 General requirements.

(a) Any production, control, validation, or distribution record that is required to be maintained in compliance with this part and is specifically associated with a batch of a drug product shall be retained for at least 1 year after the expiration date of the last batch produced with that validated process or, in the case of certain OTC drug products lacking expiration dating because they meet the criteria for exemption under § 211.137, 3 years after distribution of the batch.

* * * * *

19. Section 211.192 is revised to read as follows:

§ 211.192 Production, control, and laboratory record review and investigation of discrepancies.

(a) Written procedures shall be established and followed requiring the review and approval by the quality control unit of all drug product production, control, and laboratory records, including packaging and labeling, to determine compliance with all established and approved written procedures and specifications before a batch is released or distributed.

(b) Written procedures shall be established and followed requiring the thorough investigation of any unexplained discrepancy (including a percentage of theoretical yield exceeding the maximum or minimum percentages established in master production and control records) or the failure of a batch or any of its components or in-process materials to meet any of its specifications (including any out-of-specification test result), whether or not the batch has already been distributed. The investigation shall extend to other batches of the same drug product and other drug products that may have been associated with the specific failure or discrepancy. Such procedures shall include:

(1) Procedures for attempting to identify the cause of the failure or discrepancy.

(2) Criteria for determining whether out-of-specification results were caused by sampling or laboratory error.

(3) Scientifically sound procedures and criteria for the exclusion of any test data found to be invalid due to laboratory or sampling error.

(4) Scientifically sound procedures and criteria for additional sampling and testing, if necessary, during the investigation.

(5) Procedures and criteria for extending the investigation to other batches or other products.

(6) Procedures for review and evaluation of the investigation, including all test results, by the quality control unit, to ensure a thorough investigation.

(7) Criteria for final approval or rejection of the batch involved, and for taking action on other batches and products if indicated by the investigation.

(c) A written record of the investigation shall be made and shall include:

(1) The reason for the investigation.

(2) A description of the investigation made, including all laboratory tests.

(3) The results of the investigation, including all laboratory test results involved in the investigation.

(4) Scientifically sound and appropriate justification for excluding any out-of-specification laboratory result found to be invalid.

(5) If laboratory results are found to be invalid, the subsequent laboratory results supporting the final determination of the tested item's conformity to all appropriate specifications for acceptance.

(6) The conclusions and subsequent actions concerning all batches and products that may have been associated with the failure or discrepancy.

(7) The signature(s) and date(s) of the person(s) responsible for approving the record of the investigation.

(8) The signature(s) and date(s) of the person(s) responsible for the final decision on disposition of the batch, and on other batches and products involved.

20. New subpart L, consisting of §§ 211.220 and 211.222, is added to read as follows:

Subpart L—Validation

Sec.
211.220 Process validation.
211.222 Methods validation.

Subpart L—Validation

§ 211.220 Process validation.

(a) The manufacturer shall validate all drug product manufacturing processes including, but not limited to, computerized systems that monitor and/or control the manufacturing process. The manufacturing process includes all manufacturing steps in the creation of the finished product including, but not limited to, the following procedures: Cleaning, weighing, measuring, mixing, blending, compressing, filling, packaging, and labeling.

(b) Validation protocols that identify the product and product specifications and specify the procedures and acceptance criteria for the tests to be conducted and the data to be collected during process validation shall be developed and approved. The protocol shall specify a sufficient number of replicate process runs to demonstrate reproducibility of the process and provide an accurate measure of variability among successive runs. Validation documentation shall include evidence of the suitability of materials and the performance and reliability of equipment and systems. The manufacturer shall document execution of the protocol and test results.

(c) The manufacturer shall design or select equipment and processes to ensure that product specifications are consistently achieved. The manufacturer's determination of equipment suitability shall include testing to verify that the equipment is capable of operating satisfactorily within the operating limits required by the process. Process suitability shall include documented rigorous testing to demonstrate the effectiveness and reproducibility of the process. Parts of the process that may cause variability or otherwise affect product quality shall be tested.

(d) There shall be a quality assurance system in place which requires revalidation whenever there are changes in packaging, component characteristics, formulation, equipment, or processes, including reprocessing, that could affect product effectiveness or product characteristics, and whenever changes are observed in product characteristics.

§ 211.222 Methods validation.

The accuracy, sensitivity, specificity, and reproducibility of test methods used by a manufacturer shall be validated and documented. Such validation and documentation shall be accomplished in accordance with § 211.194(a)(2).

21. New subpart M, consisting of § 211.240, is added to read as follows:

Subpart M—Contamination

Sec.
211.240 Control of chemical and physical contaminants.

Subpart M—Contamination

211.240 Control of chemical and physical contaminants.

(a) The manufacturer shall implement written procedures designed to prevent objectionable chemical and physical contamination, including cross-contamination.

(b) Dedicated production, which may include facilities, air handling equipment, and/or process equipment, shall be employed where contaminants, such as penicillin, pose a special danger to human or animal health or if there are no reasonable methods for the cleaning and removal of drug substances and/or component residues from buildings, facilities, and equipment.

(c) If a reasonable possibility exists that a drug has been exposed to cross-contamination, the manufacturer shall test the product for the presence of the potential contaminant. The manufacturer shall establish appropriate limits for such potential contaminants. Products that exceed the established limits shall not be released for distribution.

Dated: March 29, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–11094 Filed 5–2–96; 8:45 am]

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Sheep promotion, research, and consumer information; published 5-2-96

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Cyromazine; published 5-3-96

Lactofen; published 5-3-96

Tefluthrin; published 5-3-96

Xanthan gum-modified; published 5-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Federally qualified health center services; coverage and payment requirements; published 4-3-96

INTERIOR DEPARTMENT

National Park Service

Special regulations:

Oregon Caves National Monument, OR; age restriction elimination; published 4-3-96

LABOR DEPARTMENT

Employment Standards Administration

Organization, functions, and authority delegations:

Administrative Review Board; establishment and review procedures; published 5-3-96

LABOR DEPARTMENT

Employment and Training Administration

Organization, functions, and authority delegations:

Administrative Review Board; establishment and review procedures; published 5-3-96

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Federal Contract Compliance Programs Office

Organization, functions, and authority delegations:

Administrative Review Board; establishment and review procedures; published 5-3-96

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Organization, functions, and authority delegations:

Administrative Review Board; establishment and review procedures; published 5-3-96

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Occupational Safety and Health Administration

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Administrative Review Board; establishment and review procedures; published 5-3-96

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Wage and Hour Division

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Administrative Review Board; establishment and review procedures; published 5-3-96

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Employers' contributions and contribution reports; published 5-3-96

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Federal Aviation Administration

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Boeing; published 4-3-96

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Israel Aircraft Industries; Model Galaxy, high-intensity radiated fields; published 4-3-96

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Federal and federal-aid construction contracts (including supportive services); equal employment opportunity; report requirements; published 4-3-96

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National Highway Traffic Safety Administration

Fuel economy standards:

Light trucks; 1998 model year; published 4-3-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Tariffs and schedules:

Payment of discounts by motor carriers of property to nonpayer of freight charges; proceeding terminated; published 5-3-96

TREASURY DEPARTMENT

Customs Service

Articles conditionally free, subject to reduced rate, etc.:

North American Free Trade Agreement (NAFTA); implementation; published 5-3-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Spearmint oil produced in Far West; comments due by 5-9-96; published 4-9-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bird quarantine facilities, privately owned; screening; comments due by 5-10-96; published 3-12-96

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Food Safety and Inspection Service

Federal regulatory review; comment period reopening; comments due by 5-10-96; published 3-11-96

Meat and poultry inspection:

Substances suitable for use in meat and poultry products preparation; approval procedures; comments due by 5-6-96; published 3-6-96

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:

Softwood lumber from Canada; province of manufacture information collection for Customs entry records; comments due by 5-6-96; published 4-9-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic surf clam and ocean quahog; comments due by 5-10-96; published 5-2-96

Atlantic swordfish; comments due by 5-6-96; published 4-5-96

Gulf of Mexico and South Atlantic spiny lobster; comments due by 5-9-96; published 3-25-96

Gulf of Mexico stone crab; comments due by 5-9-96; published 3-25-96

Northern anchovy; comments due by 5-10-96; published 3-26-96

Salmon fisheries off coast of Alaska; comments due by 5-10-96; published 3-26-96

South Atlantic shrimp; comments due by 5-9-96; published 3-19-96

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Military traffic management:

Freight traffic movement by air forwarders; comments due by 5-6-96; published 4-4-96

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ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 5-9-96; published 4-9-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 255/P.L. 104–135

To designate the Federal Justice Building in Miami, Florida, as the ''James Lawrence King Federal Justice Building''. (Apr. 30, 1996; 110 Stat. 1322)

H.R. 869/P.L. 104–136

To designate the Federal building and United States courthouse located at 125 Market Street in Youngstown, Ohio, as the ''Thomas D. Lambros Federal Buildingand United States Courthouse''. (Apr. 30, 1996; 110 Stat. 1323)

H.R. 1804/P.L. 104–137

To designate the United States Post Office-Courthouse located at South 6th and Rogers Avenue, Fort Smith,

Arkansas, as the ''Judge Isaac C. Parker Federal Building''. (Apr. 30, 1996; 110 Stat. 1324)

H.R. 2415/P.L. 104–138

To designate the United States Customs Administrative Building at the Ysleta/ Zaragosa Port of Entry located at 797 South Zaragosa Road in El Paso, Texas, as the ''Timothy C. McCaghren Customs Administrative Building''. (Apr. 30, 1996; 110 Stat. 1325)

H.R. 2556/P.L. 104–139

To redesignate the Federal building located at 345 Middlefield Road in Menlo Park, California, and known as the Earth Sciences and Library Building, as the ''Vincent E. McKelvey Federal Building''. (Apr. 30, 1996; 110 Stat. 1326)

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